

The
HANDBOOK
of
Regulatory
Compliance
for the



AFRP

ANADROMOUS FISH RESTORATION PROGRAM

U.S. Fish & Wildlife Service

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Acronyms and Abbreviations

ACHP	Advisory Council on Historic Preservation
ACID	Anderson-Cottonwood Irrigation District
Action coordinator	Designated Project Manager for a Specific AFRP Restoration Plan Action or Evaluation
AFRP	Anadromous Fish Restoration Program
APCD	Air Pollution Control District
APE	Area of Potential Effects
AQMD	Air Quality Management District
ARB	California Air Resources Board
BIA	Bureau of Indian Affairs
BLM	Bureau of Land Management
BMPs	Best Management Practices
Caltrans	California Department of Transportation
CCR	California Code of Regulations
CEQA	California Environmental Quality Act
CESA	California Endangered Species Act
CFR	Code of Federal Regulations
cfs	Cubic Feet per Second
CNFH	Coleman National Fish Hatchery
Corps	U.S. Army Corps of Engineers
CVP	Central Valley Project
CVPIA	Central Valley Project Improvement Act

CVPIA PEIS	Central Valley Project Improvement Act Programmatic Environmental Impact Statement
DCC	Delta Cross Channel
DSOD	California Division of Safety of Dams
DWR	California Department of Water Resources
EA	Environmental Assessment
EIR	Environmental Impact Report
EIS	Environmental Impact Statement
EPA	U.S. Environmental Protection Agency
ESA	Federal Endangered Species Act
FACTA	Food, Agriculture, Conservation, and Trade Act
FHWA	Federal Highway Administration
FONSI	Finding of No Significant Impact
FR	Federal Register
FWCA	Fish and Wildlife Coordination Act
GCID	Glenn-Colusa Irrigation District
HCP	Habitat Conservation Plan
IEP	Interagency Ecological Program
ITA	Indian Trust Asset
mg/L	Milligrams per Liter
MOA	Memorandum of Agreement
MOU	Memorandum of Understanding
MOU/MA	Memorandum of Understanding/Management Authorization
NCCP	Natural Communities Conservation Plan

NEPA	National Environmental Policy Act
NHPA	National Historic Preservation Act
NPDES	National Pollutant Discharge Elimination System
NPS	National Park Service
NRCS	Natural Resources Conservation Service
NRHP	National Register of Historic Places
PEIS	Programmatic Environmental Impact Statement
PG&E	Pacific Gas and Electric Company
Reclamation	U.S. Bureau of Reclamation
Restoration Plan	Anadromous Fish Restoration Plan
ROW	Right-of-Way
RWQCB	Regional Water Quality Control Board
SB	Senate Bill
SHPO	State Historic Preservation Officer
SLC	State Lands Commission
SWP	State Water Project
SWRCB	California State Water Resources Control Board
USFS	U.S. Forest Service
USFWS	U.S. Fish and Wildlife Service
WDR	Waste Discharge Requirement
1995 WQCP	1995 Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary

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Introduction

This handbook was first published in 1997. Due to several important changes in environmental laws, regulations, and case law, this handbook has been revised and republished. Please discard the 1997 edition and consult the 2005 edition of this handbook for the current regulatory requirements applicable to the AFRP and implementation of Restoration Plan actions.

This handbook presents an overview of the federal, state, and local laws and regulations that may apply to implementation of actions developed through the U.S. Fish and Wildlife Service's (USFWS) Anadromous Fish Restoration Program (AFRP). The handbook is intended to give those individuals responsible for planning, developing, and implementing AFRP restoration actions an understanding of the key steps, requirements, and decision points relative to environmental compliance in project approvals. It also is intended to serve as a reference for project planning, permit processing, and environmental documentation requirements in general.

This chapter provides background information on the AFRP and describes the objectives and organization of this handbook. The chapter is organized as follows:

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Anadromous Fish Restoration Program Background

Section 3406(b)(1) of the Central Valley Project Improvement Act (CVPIA) (Title 34 of Public Law 102-575) amends the authorization of the Central Valley Project (CVP) to include fish and wildlife protection, restoration, and mitigation as project purposes having equal priority with irrigation and domestic uses, and fish and wildlife enhancement as a purpose equal to power generation. Section 3406(b)(1) directs the Secretary of the Interior to develop and implement a program that makes all reasonable efforts to ensure that, by 2002, natural production of anadromous fish in Central Valley rivers and streams (excluding the San Joaquin River above Mendota Pool) will be sustainable, on a long-term basis, at levels not less than twice the average levels attained during 1967-1991 (the San Joaquin River above Mendota Pool is addressed by Section 3406[c]).

The AFRP, being led by USFWS, was established to implement Central Valley anadromous fish restoration projects to meet the Section 3406(b)(1) directive. The six species identified for restoration efforts under the AFRP are Chinook salmon, steelhead, striped bass, American shad, white sturgeon, and green sturgeon (not listed in any order of priority).

The *USFWS Revised Final Restoration Plan for the AFRP*, January 9, 2001 (Restoration Plan) presents the goals, objectives, and strategies that the AFRP uses to address Section 3406(b)(1) of the CVPIA. The Restoration Plan describes processes for identifying, developing, selecting, and implementing restoration actions and lists actions and evaluations determined by USFWS to be reasonable for implementation in the near future or that are currently being implemented. The Restoration Plan list of anadromous fish restoration actions and evaluations is not exhaustive, and additional actions not explicitly mentioned in the Restoration Plan may also be described and implemented in the future.

The Restoration Plan and other AFRP actions will involve regulatory oversight from a number of federal, state, and local governmental agencies that operate within a complex framework of laws and regulations. While a Final Programmatic Environmental Impact Statement (FPEIS) has been prepared for the CVPIA (CVPIA PEIS) dated October 1999 with the record of decision adopted January 1, 2001 (see: www.usbr.gov/mp/cvpia), most actions will require additional environmental documentation and permitting before they can be implemented. The FPEIS assessed the Restoration Plan's environmental effects at a programmatic level since the size of the geographic area covered precluded project specific detail and analysis. Specific Restoration Plan actions will be able to utilize, via tiering (see pg. 2-2), the "big picture" analysis in the FPEIS and CALFED EIS/EIR (discussed below) and focus on the project specific analysis of direct and indirect impacts in any additional environmental documentation required.

Effectively designing, implementing, managing, and monitoring AFRP actions requires efficient processing of information needed for conforming with the regulatory procedures of the different agencies and their protocols, guidelines, and timelines. Consequently, environmental permitting of actions is critical to the successful and expeditious implementation that is needed to help restore anadromous fish populations and habitats throughout the Central Valley.

Particular responsibilities in the environmental permitting process for AFRP actions may fall to one agency or a number of agencies. Action coordinators--project managers for Restoration Plan or other AFRP actions-- will need to closely coordinate with the regulatory agencies responsible for environmental permitting and with other agencies that may, in partnership, be involved in the planning of these actions.

AFRP and CALFED

Effective January 1, 2003 a new state agency has formally assumed responsibility for overseeing implementation of the Bay-Delta Program. The California Bay-Delta Authority (Authority) (formerly known as CALFED) established by legislation enacted in 2002, provides a permanent governance structure for collaborative state-federal effort that began in 1994.

The Authority was established by enactment of Senate Bill 1653 (Costa) of 2002. The legislation calls for the Authority to sunset on January 1, 2006, unless federal legislation has been enacted authorizing the participation of appropriate federal agencies in the Authority.

Existing federal and state programs, including CALFED and the Bay-Delta Accord Category III program; local watershed group activities; and other restoration activities may also affect how AFRP actions are permitted and implemented. Specifically, the CALFED ROD, Attachment 3, Implementation Memorandum of Understanding identifies AFRP actions as CALFED Category A. Category A includes programs and funding that should be consistent with the CALFED Program objectives and priorities and submitted to the CALFED Policy Group for review and recommended approval. Accordingly, AFRP projects have been functionally integrated with the CALFED Ecosystem Restoration Program (ERP) proposal solicitation process to select projects for funding.

The AFRP has participated in the project selection process and considered funding program-appropriate projects solicited through the CALFED ERP. The projects listed in the annual work plan are selected by the AFRP Program Managers and Habitat Restoration Coordinators in coordination with CALFED staff, from the list of projects recommended for funding by the CALFED selection panel based on the following criteria: (1) applicability to the AFRP goal, objectives, strategies, and priorities identified in the Restoration Plan and the AFRP website; (2) whether the projects were continuations of projects previously funded by the AFRP; and (3) the projects need for Habitat Restoration Coordinator-level management. As a result of this close integration with CALFED, certain aspects of AFRP actions are required to tier from CALFED documents, i.e., endangered species compliance via Action Specific Implementation Plans (ASIPs). Where it is required that certain CALFED programmatic documents be utilized for tiering purposes, such requirement will be identified in the appropriate section. More commonly, the decision as to whether to tier from CALFED or AFRP programmatic documents is a pragmatic decision based on what document provides the most relevant and useful information. In addition to tiering, it may be appropriate to incorporate by reference either CALFED, AFRP, or both programmatic documents in certain situations where the analysis contained in the program document(s) is relevant to the project-level analysis.

Permit Handbook Need and Objectives

The fundamental goal of this permit handbook is to provide clear guidance to action coordinators and other related parties, including managers and technical staff of USFWS and partner agencies, landowners, and individuals responsible for implementing the Restoration Plan actions on the environmental documentation and regulatory requirements that may pertain to specific types of actions, in order to facilitate their quick and efficient implementation. Underlying this goal is the need to provide opportunities for good planning in the environmental regulatory compliance process. The handbook meets this goal by:

- ❖ Providing succinct overviews of appropriate National Environmental Policy Act (NEPA), California Environmental Quality Act (CEQA), and other regulatory requirements, steps, and review times;
- ❖ Identifying applicable laws, regulations, executive orders, administrative policies, procedures, and public involvement requirements for categories of Restoration Plan actions;
- ❖ Providing flow diagrams to describe requirements and strategies for compliance with particular federal and state laws and regulations to implement Restoration Plan actions;
- ❖ Addressing issues and options for implementing each category of actions in compliance with NEPA, CEQA, and other pertinent environmental regulations; and
- ❖ Providing guidance in the form of examples of regulatory compliance documentation.

This handbook includes the permitting and authorization requirements of the following agencies that could be involved in the approval process for any given action:

- ♦ U.S. Army Corps of Engineers
- ♦ U.S. Fish and Wildlife Service
- ♦ National Marine Fisheries Service
- ♦ U.S. Bureau of Reclamation
- ♦ U.S. Bureau of Land Management
- ♦ National Park Service
- ♦ U.S. Forest Service
- ♦ Natural Resources Conservation Service
- ♦ Bureau of Indian Affairs
- ♦ California State Water Resources Control Board

- ♦ California Regional Water Quality Control Boards
- ♦ California Department of Fish and Game
- ♦ State Historic Preservation Officer/Advisory Council on Historic Preservation
- ♦ State Lands Commission
- ♦ State Reclamation Board
- ♦ California Department of Water Resources
- ♦ California Department of Transportation
- ♦ Air districts
- ♦ County and other local agencies

Although this handbook was designed primarily to address the requirements that would apply to Restoration Plan actions, it is applicable to the needs of a broader range of users, particularly project managers for other future AFRP actions and for actions under other parts of Section 3406(b) of the CVPIA.

Permit Handbook Organization

This permit handbook is organized as follows:

Chapter 1: "Introduction," provides basic information regarding the handbook. This chapter describes the AFRP background and permit handbook objectives, organization, and use.

Chapter 2: "Compliance Strategies for Handbook Users," provides recommendations to facilitate and streamline project permitting. This chapter provides suggestions for strategies that have been used successfully on other similar projects to meet regulatory requirements.

Table 1 presents the general approach for timing and development of certain key environmental review processes necessary for establishing an effective environmental compliance strategy.

Chapter 3: "Permitting Requirements of Restoration Plan Action Categories," describes the categories into which the Restoration Plan actions have been classified for purposes of this handbook. Chapter 3 indicates which permits and other forms of environmental compliance may be required for implementing actions in each of these identified categories.

Table 2 summarizes the general categories of Restoration Plan actions for Central Valley rivers and tributaries.

Table 3 summarizes which permits, laws, and other authorizations may apply to actions in each category and identifies the agencies with regulatory oversight.

Chapter 4: "Environmental Regulations and Permits," describes the NEPA and CEQA documentation and relevant permits and permitting processes that could be required for implementing Restoration Plan actions. Whereas Chapter 3 provides regulatory compliance information organized by action category, Chapter 4 is organized according to permits, laws, and authorizations. Chapter 4 provides both general and AFRP-specific information as a guide to the steps necessary to meet the pertinent regulatory requirements.

This chapter was developed from discussions with several key agencies, as well as from information contained in the *California Permit Handbook* (California Office of Permit Assistance 2002 , <http://www.commerce.ca.gov/ttca/pdfs/detail/dsti/CAPermitHandbook.pdf>); and the *Guide to Regulatory Compliance for Implementing CALFED Actions*, (<http://calwater.ca.gov/CALFEDDocuments/GuideToRegulatoryCompliance.shtml>).

Chapter 4 is divided into four parts:

- ♦ National Environmental Policy Act and California Environmental Quality Act
- ♦ Federal Laws, Executive Orders, Administrative Policies, and Implementing Regulations
- ♦ State Laws and Implementing Regulations

- ♦ Local Regulatory Compliance

Table 4 shows the key project features that trigger the need for compliance with each environmental regulatory process.

Chapter 5: "Citations," lists all documents cited.

Appendix A: "Similarities and Differences between NEPA and CEQA," supplements the information on NEPA and CEQA in Chapters 2 and 4 by providing a comparative overview of the terminologies and procedures of the two acts.

Appendix B: "Examples of Regulatory Compliance Documents and Permit Applications," which is bound as a separate volume, presents examples and excerpts of permits and environmental compliance documentation to assist handbook users in understanding the types of information that need to be provided to meet various regulatory compliance requirements.

How to Use the Permit Handbook

The responsibilities of Habitat Restoration Coordinators (and other related parties) could vary widely in a number of ways. Some Habitat Restoration Coordinators, for example, may be responsible for implementing fish screen projects over a broad geographic area under many different riverine conditions. Others may need to implement a variety of habitat restoration measures within the limited geographical context of a single watershed.

Some Habitat Restoration Coordinators have already started, or even completed, environmental documentation for some Restoration Plan actions. Many are highly experienced in obtaining environmental clearances for complex projects, while others may have only cursory experience satisfying the often times complex array of regulatory permit requirements.

This handbook has been developed to meet the needs of all Habitat Restoration Coordinators and of other individuals and stakeholders participating in Restoration Plan implementation. Following the steps set forth below is highly recommended and will assist users in developing and implementing effective and efficient compliance strategies for Restoration Plan implementation. An earlier version of this handbook was published in 1997; however, there have been several important changes in the laws, regulations, and caselaw that required revisions to the handbook. Please discard the 1997 edition and consult the 2004 edition of this handbook for the current regulatory requirements applicable to the AFRP and implementation of Restoration Plan actions.

Recommended Steps for Using This Handbook

Step 1: Read the information on compliance strategies (Chapter 2) for recommendations on general approaches to strategic planning and opportunities for streamlining overall regulatory compliance for actions, including NEPA and CEQA compliance. This will provide a greater understanding of the context in which specific permits will be implemented.

Step 2: Use Chapter 3 to determine the action categories that apply to the actions to be implemented and to identify the regulations that may be applicable to the pertinent action categories.

Step 3: Consult the appropriate sections of Chapter 4 for specific information on compliance procedures for the pertinent regulations identified in Step 2. Chapter 4 provides step-by-step descriptions of environmental regulatory processes in text and flowcharts.

Step 4: Review the information on compliance strategies (Chapter 2) to select which strategies may be useful for permitting the specific action or set of actions. Refer to Appendix A where appropriate for additional information on the similarities and differences in NEPA and CEQA processes and Appendix B for examples and excerpts of permits and environmental compliance documentation.

Step 5: Initiate, conduct, and complete permitting processes for each applicable regulation using this handbook as the primary reference (particularly Chapter 4, with appropriate examples in Appendix B for further guidance).

The following additional references contain excellent regulatory information that could supplement the information in this permit handbook (see Chapter 5 for complete citations):

- ♦ California Permit Handbook (California Office of Permit Assistance 2002)
- ♦ Guide to Regulatory Compliance for Implementing CALFED Actions (CALFED 2002)
- ♦ Mastering NEPA: A Step-by-Step Approach (Bass and Herson 2001, Second Edition)
- ♦ CEQA Deskbook (Bass et al. 1999, Second Edition)
- ♦ Wetlands, Streams, and Other Waters: Regulation, Conservation, and Mitigation Planning (Cylinder et al. 2003)
- ♦ California Land Use and Planning Law (Curtin 2003, Twenty Third Edition)

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Compliance Strategies for Handbook Users

This chapter discusses environmental compliance requirements and presents recommendations to facilitate and, where appropriate, streamline environmental compliance and project permitting. Included are compliance strategies that have been used successfully on other similar projects to meet regulatory requirements.

This chapter first presents the framework for the need for strategic planning. The chapter recommends steps for an overall strategy for complying with the National Environmental Policy Act (NEPA) and the California Environmental Quality Act (CEQA) and with various environmental laws and regulations when project-level actions of the Restoration Plan are proposed for implementation. The chapter also discusses the relationship between AFRP actions and CBDP actions for purposes of environmental compliance strategy.

Following is the organization of this chapter:

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Need for Strategic Planning

Strategic planning for implementing Restoration Plan actions refers to planning coordinated direction to expedite or streamline the environmental compliance process and most effectively implement project-specific actions. Strategic planning is planning based on an understanding of the "big picture"--an overview of the environmental regulatory process and of how regulatory compliance processes for various individual actions may be related. An understanding of the whole process and ability to plan based on this understanding are important both for the project team and for other involved parties, such as the stakeholders, and may be a necessary step in obtaining public cooperation.

Application of Program-Level Documentation to Project-Level Restoration Plan Actions

The program-level environmental documentation of the Central Valley Project Improvement Act Programmatic Environmental Impact Statement (CVPIA PEIS) and CBDP Bay-Delta Program PEIS/EIR (CBDP PEIS/EIR) (referred to collectively as "Programmatic Documents") are useful for identifying important resource and mitigation commitments for implementing large-scale programs, including Restoration Plan actions. The program-level analysis serves as an umbrella for broad issues related to the program. The Programmatic Documents program-level analysis includes an assessment of the cumulative effects of the project-specific actions that will be implemented under the AFRP. Program-level documentation can also be designed, to meet project-level requirements if sufficient detail is available at the time of drafting the document. If the program-level document has an adequate level of detail it may be utilized for project-level approvals; however, in most instances, program-level analysis is insufficient alone to be relied on for project-level approvals.

Tiering from Program-Level Documents

In those situations where the Programmatic Documents do not specifically address and analyze the impacts and mitigation measures necessary for a project-level action, the project-level environmental review can be streamlined by tiering from the Programmatic Documents (program-level). The concept of tiering anticipates a multi-tiered approach to preparing EISs and EIRs. The first-tier EIS and EIR covers general issues in a broader program-oriented analysis, including important program resource and mitigation commitments required to be implemented at the project-level. Subsequent tiers incorporate by reference the general discussions from the broader document, concentrating on the issues specific to the proposed action being evaluated. (See 40 C.F.R. 1508.28; CEQA Guidelines Section 15152.) Agencies are encouraged to tier their NEPA and/or CEQA analysis to avoid repetition of issues and to focus on the issues for decision at each level of review. Subsequent NEPA and/or CEQA compliance involves either the preparation of a focused EIS and/or EIR or an EA supporting a FONSI and/or Negative Declaration.

There is no requirement that a program-level EIS/EIR tier from either of the Programmatic Documents or that one be given preference over the other. The particular facts and ability of a Programmatic Document to provide the necessary information to streamline the project-level document should be the primary

reason for deciding whether to tier from either of the Programmatic Documents.¹ Regardless of whether a program-level EIS/EIR tiers from the Programmatic Documents, it is essential for program-level review to be consistent with the policy commitments described in the ROD and that each project implementing the CBDP will be subject to the appropriate type of environmental analysis and will evaluate and use the appropriate programmatic mitigation strategies described in the Programmatic Documents and the ROD.

Strategic Planning of Project-Level Documentation for Implementing Restoration Plan Actions

Identify and Utilize Existing Programmatic Environmental Review (Tiering)

While the CVPIA PEIS and CBDP EIS/EIR (Programmatic Documents) analyze the effects of broad programs or series of actions, implementation of a particular component of the Restoration Plan is likely to require preparation of project-specific documentation focusing on the impacts unique to the project that were not analyzed at the programmatic level (see Chapter 2 and discussion below). Project-level documentation will likely be required if:

- ❖ The action, or series of actions, was not adequately addressed in the programmatic documentation; or
- ❖ The action, or series of actions, was substantially changed since completion of the programmatic documentation.

NEPA will likely require additional project-specific environmental documentation in the form of a Categorical Exclusion; or, if the action cannot meet the conditions of a Categorical Exclusion, an Environmental Assessment (EA) supporting the preparation of a Finding of No Significant Impact (FONSI); or, if the action will have the potential to cause a significant effect on the environment and no mitigation that reduces impacts has been added to the project description, an Environmental Impact Statement (EIS) (see Assessing NEPA Compliance Needs, p. 2-14). Additionally, CEQA (if triggered by a state or local agency action) will most likely require equivalent environmental impact analysis for state or local agencies involved in granting discretionary approvals for the proposed action (see Assessing CEQA Compliance Needs, p. 2-36).

Determining Whether to Utilize CVPIA or CBDP Programmatic Documents

Before developing an environmental compliance strategy it is necessary to determine whether the Restoration Plan action should tier from CBDP as opposed to CVPIA programmatic documents. Depending on the nature of your project, one of the Programmatic Documents may provide a better option for tiering than the other. In most cases, CVPIA PEIS will provide analysis that is more specifically related to Restoration Plan actions; however, CBDP has integrated Restoration Plan actions

¹ Currently (time of publication), the CBDP EIS/EIR is being challenged for legal adequacy under both NEPA and CEQA, therefore, no subsequent project-level NEPA or CEQA documents should tier from the CBDP EIS/EIR until the litigation has concluded and the inadequacies in document, if any, are remedied. Tiering from the CBDP EIS/EIR could be grounds for invalidating the project-level EIR if the CBDP EIS/EIR is found to be inadequate.

into the Ecosystem Restoration Program. Accordingly, CBDP may provide useful analysis if it is determined that tiering from CBDP is preferable.

Regardless of which Programmatic Document is tiered from, if any, imposes certain programmatic requirements on “CBDP Projects” that must be complied with. A “CBDP Project” or “Program action” is one that is:

- ❖ Within the scope of the CBDP Final PEIS/EIR; and
- ❖ Carried out or funded by CBDP Agencies as part of the CBDP.

CBDP Agencies include the following: California Resources Agency, California Department of Fish and Game (DFG), California Department of Water Resources (DWR), the Delta Protection Commission, the Reclamation Board, California Department of Food and Agriculture, California Environmental Protection Agency, SWRCB, U.S. Department of the Interior (DOI), U.S. Bureau of Reclamation (DWR), U.S. Fish and Wildlife Service (USFWS), U.S. Geological Survey (USGS), U.S. Bureau of Land Management (BLM), U.S. Environmental Protection Agency (EPA), U.S. Army Corps of Engineers (USACE), United States Department of Commerce, NOAA Fisheries, the United States Department of Agriculture, NRCS, the United States Forest Service, and the Western Area Power Administration.

If a project meets the above criteria, it should comply with the specific tiering requirements of CBDP. A thorough discussion of CBDP’s requirements can be found in the *CALFED Bay-Delta Program, Guide to Regulatory Compliance for Implementing CALFED Actions, Vol. 1 and 2*. CBDP does not necessarily require projects meeting the above description to tier from the CBDP EIS/EIR; however, it does require tiering from CBDP’s Programmatic State and federal endangered species act compliance documents via the preparation of an Action Specific Implementation Plan or ASIP (see p. 2-59 and 4-39). Moreover, it is essential that CBDP projects, as defined above, meet the policy commitments described in the ROD and that each project implementing the Bay-Delta Program be subject to the appropriate type of environmental analysis and evaluate and use the appropriate programmatic mitigation strategies described in the PEIS/EIR and the ROD.

Develop Environmental Compliance Strategy

Because the CVPIA PEIS and CBDP PEIS/EIR do not contain the specific detail necessary for NEPA (or CEQA) compliance for implementation of most of the specific Restoration Plan actions, project-level documentation will have to be carefully planned and coordinated for the various related action-level projects of the Restoration Plan to be implemented within reasonable schedules, budgets, and levels of effort.

Regardless of the NEPA (or CEQA) compliance requirements, the planning of project-level documentation will require an assessment of other environmental compliance requirements so that an environmental compliance strategy can be developed that incorporates all the environmental compliance requirements into one cohesive process (see Table 1). Developing an environmental compliance strategy will give decision makers a definitive overview of project-level documentation and scheduling requirements for complying with environmental review and permitting requirements. The strategy for compliance will direct the decision makers to focus on the critical-path environmental compliance

requirements; this focus will enable them to most efficiently move a proposed action through the environmental review and permitting process (see Streamlining discussion, p. 2-50).

Project-level documentation will most likely require definition of specific actions; evaluation of potential beneficial and adverse effects; and provision of an opportunity for concerned agencies, stakeholders, and the public to participate in the planning and review process to aid responsible decision makers in their consideration of project and permit approvals in compliance with pertinent environmental laws. Project-level environmental documentation should be developed and processed for approval when the action coordinator (the project manager for a Restoration Plan action, who typically represents the lead agency, permit applicant, or project proponent) has adequately defined specific actions and is ready to proceed with obtaining approval for implementing those actions.

The remainder of this chapter describes recommended steps for the action coordinators' development of strategies for environmental compliance.

Table 1. Stages in Major Environmental Compliance Processes				
Requirement	Scoping Process	Draft Document	Final Document	Decision Making
NEPA	Notice of Intent	Draft EA or EIS	Final EA/FONSI or EIS	Lead agency decision and Record of Decision
CEQA	Notice of Preparation	Draft Initial Study or EIR	Final Initial Study/Negative Declaration or EIR	Lead agency decision and Notice of Decision
Section 7 of Endangered Species Act	Request species list	Biological Assessment / Action Specific Implementation Plan (ASIP)	Biological Opinion / ASIP	USFWS and/or NOAA Fisheries
Section 404 of Clean Water Act	Define objectives; screen alternatives; submit permit application	Draft Section 404(b)(1) analysis	Final Section 404(b)(1) analysis	Corps issues Section 404 permit (after Section 401 certification or waiver)
Section 106 of National Historic Preservation Act	Identify and evaluate historic and archaeological properties	Draft effects assessment	Memorandum of Agreement	
Public involvement	Scoping meetings	Public comment; public hearing	Public comment	

Timeline: Project startup		Project implementation		
Approximate timeline for actions requiring an EIS and EIR	Month 1	Month 6	Month 9	Month 12
Approximate timeline for actions requiring an EA/FONSI and Initial Study/Negative Declaration	Month 1	Month 3	Month 4	Month 5

Step-by-Step Approach for Compliance with Environmental Laws and Regulations

Key Issues

- ❖ *Conduct a preliminary constraints analysis to identify potential impacts and regulatory issues*
- ❖ *Develop an environmental compliance strategy based on information gained from the preliminary constraints analysis to assist in streamlining the process*
- ❖ *Develop a well-defined project description to avoid project cost and scheduling issues*
- ❖ *Early agency coordination and public involvement in the process to assist in identifying issues*

Need for a Step-by-Step Approach to Environmental Compliance

Although not necessary for the completion of environmental review and permitting of Restoration Plan actions, the following approach will be helpful in the assessment of compliance needs for satisfying the environmental laws and regulations that are applicable to a particular Restoration Plan action. This process will facilitate and streamline the environmental review and permitting process for the Restoration Plan actions by ensuring that both timing and regulatory issues are identified early in the process.

Step One: Assess NEPA and CEQA Compliance Needs

Develop Project Description for determining utilization of Programmatic Documents and level of NEPA and CEQA analysis

The first step in assessing compliance needs for satisfying appropriate environmental laws and regulations is to address NEPA and CEQA requirements (see pp. 2-14 and 2-36, respectively; see also Chapter 4). The level of effort required for complying with NEPA and CEQA will often dictate scheduling and budget issues associated with implementation of a particular action. Accordingly, it is essential to first develop a stable project description that will allow the proper level of compliance and additional review (discussed below) to be accurately predicted. The particular method of compliance with NEPA and CEQA varies depending on how effectively a project can tier from Programmatic Documents (e.g., CVPIA PEIS or CBDP EIS/EIR). Therefore, as part of the first step in environmental compliance, Programmatic Documents should be reviewed to determine the extent to which the particular Restoration Plan action (project description) has been addressed. Note: because of the general nature of the environmental analysis in the Programmatic Documents, Restoration Plan compliance with NEPA and CEQA will most likely necessitate a thorough analysis of project specific environmental impacts.

Step Two: Conduct a Preliminary Constraints Analysis

During the time when the Habitat Restoration Project Manager is assessing NEPA and CEQA compliance needs, an assessment of site information should be performed through a preliminary constraints analysis, providing for analysis of potential environmental issues and anticipation of environmental permitting and compliance requirements associated with the proposed project site and project description. Environmental conditions, such as the presence of wetlands, may greatly increase the cost of a project and the length of time prior to its implementation because of the regulatory permits that could be required. A preliminary constraints analysis can provide input on sensitive resources and potential impacts early in the planning process allowing for the project to be modified to avoid sensitive issues and lessen impacts early in the project design phase.

Survey Protocol

The constraints analysis should include preliminary surveys of the site for wetlands, endangered and threatened species and their habitats, cultural resources, and hazardous materials. Following specific regulatory survey protocol can be costly and time consuming; therefore, unless it is obvious that some or all of the site contains a particular resource that would trigger the need for compliance with environmental laws and regulations, it may not be necessary to perform the preliminary survey according to specific regulatory survey protocol. At this stage, it may be enough to perform a reconnaissance-level survey to identify the potential resources on the project site and the general extent of those resources.

Constraints Analysis

A Habitat Restoration Project Manager should use the preliminary survey information to prepare a constraints analysis that identifies potential areas of concern and possible avoidance areas for a particular site.

A constraints analysis is useful for the Habitat Restoration Project Manager's assessment of whether the site is appropriate (or considered to be within the reasonable range of alternatives for purposes of NEPA and CEQA compliance). If the site is appropriate, this information can assist the Habitat Restoration Project Manager in revising the project description and site design to avoid impacts where possible and to minimize impacts that cannot be avoided. This information will also allow the Habitat Restoration Project Manager to anticipate permit and mitigation requirements; incorporate mitigation, where appropriate, streamline the NEPA and CEQA compliance process in conjunction with other required permits and associated studies; and plan for the costs associated with the mitigation measures.

Step Three: Prepare an Environmental Compliance Strategy

Habitat Restoration Project Managers should use the information from the preliminary constraints analysis along with site design information and the project description to develop an environmental compliance strategy. They should also keep in mind the NEPA and CEQA approach, when preparing an environmental compliance strategy. Spending time developing a compliance strategy early in the planning process can reduce redundancies, saving both time and money.

Identify Relevant Environmental Laws and Regulations

Subsequent to determining NEPA and CEQA compliance needs, an environmental compliance strategy should be developed. The objective of the environmental compliance strategy is to identify the other environmental laws and regulations (using the information below, starting on page 2-50, and in Chapter 4) that must be complied with based on the environmental resources identified in the preliminary constraints analysis. The environmental compliance strategy should assist the Habitat Restoration Project Manager in identifying the lead agencies and other agencies (responsible or cooperating agencies) that are required by law to be involved for both NEPA and CEQA compliance.

Early Consultation with Regulatory Agencies

Subsequent to developing a list of potential regulatory requirements associated with the proposed Restoration Plan action, the identified regulatory agencies should be consulted as early as possible in the project planning process to:

- ❖ Confirm jurisdiction over the proposed action
- ❖ Determine the specific steps in the review process
- ❖ Learn about any necessary technical studies and consultation requirements
- ❖ Agree on an integrated approach to environmental review processing
- ❖ Determine whether streamlined approach is available
- ❖ Establish a contact person to coordinate schedule for processing

Early consultation with appropriate federal, state, and local regulatory agencies should be conducted to facilitate and streamline the permitting process. A number of regulatory permit processes (discussed in Ch 4). encourage and specifically provide for pre-application consultation. Information regarding priorities for specific projects should be communicated to the regulatory agencies as early as possible to inform the agency staff of potential staffing needs. If possible, project design should remain flexible at this stage to encourage incorporation of modifications that may allow the proposed action to avoid or substantially reduce effects to environmental resources that trigger the need for regulatory compliance and permits.

As identified at the end of this chapter (beginning on page 2-50), certain environmental regulations and permits (e.g., Section 404 General and Regional Permits) provide methods for streamlining the compliance process for certain types of similar actions. For these streamlined processes, as long as the similar actions have minimal direct and cumulative environmental effects, the permitting agencies may be able to provide a blanket approval with established preconditions for permit issuance. If a proposed action can meet the conditions, the permit may automatically be issued and no further environmental review may be required.

Identify Key Decision Points on Timeline

It is recommended that the Habitat Restoration Project Manager's environmental compliance strategy include a timeline presenting the applicable environmental regulations and permits in the context of their temporal relationship with each other and the overall project timeline (Table 1, see also the discussion on page 2-50). Key decision points for the environmental regulations and permits should be identified. The environmental compliance strategy should also include the anticipated process for complying with NEPA and, if applicable, CEQA and how this process interrelates with the other permits involved. The environmental compliance strategy should:

- ❖ Depict major steps in each regulatory agency's review process
- ❖ Identify parallel steps and common technical study requirements
- ❖ Contain a master schedule for integrating environmental review
- ❖ Identify responsible individuals with the lead agency's staff (or consulting firm)

Identify Critical Path for Compliance

The next task for the Habitat Restoration Project Manager is to identify the critical phases in the environmental compliance strategy in order to prioritize the permitting process. The Habitat Restoration Project Manager should utilize the timeline to determine which environmental regulations and permits should be started first. It is probable that the processes for several environmental regulations and permits should be started simultaneously and proceed concurrently. The goal of the environmental compliance strategy is to find common ground among agencies and formalize their commitment to the concurrent processing of environmental requirements. It is also important to note that any time schedule should recognize that timely responses from permitting and review agencies might not always be possible because of staffing issues or changes in regulations or policies.

Draft and Sign any Necessary Memorandum of Understanding

The lead NEPA or CEQA agency may want to draft a Memorandum of Understanding (MOU) with the applicable regulatory agencies to formalize the involvement of other agencies in the integrated NEPA/CEQA process. Such agreements should spell out the respective agency's roles and responsibilities, timing, and conflict resolution mechanisms. In addition to committing agencies to certain involvement and milestones, an MOU often helps agencies take integration more seriously.

General Recommendations Regarding Environmental Regulations and Permits

Preparation of a Well-Defined Project Description

The Habitat Restoration Project Manager should have a well-defined project.

The efficiency of environmental review and permit processing for Restoration Plan actions can depend on the stability of a project description. The project description, is the “project” that is being evaluated, it in essence, defines the project. If the project definition changes it is likely that the impacts associated with it will also change. The more the description of the proposed action changes after the environmental review process has started, the more delays can occur as a result of the need to reanalyze certain environmental resources potentially affected by the proposed action (e.g., a project within a waterway that changes the amount of streambed disturbance would not only affect the water quality analysis but also the fisheries analysis). Accordingly, it is very important to consider all stages of a project when developing a project description. This includes construction staging and impacts as well as ongoing operation and maintenance issues.

Permit Coordination

The Habitat Restoration Project Manager should have a good understanding of the environmental regulations and permit processes so that he or she can achieve familiar working relationships with the various permitting agencies in addition to having the ability to anticipate permit requirements as opposed to simply responding to requests. The AFRP should distribute to all Habitat Restoration Project Managers those environmental compliance documents that have been successful for a particular Restoration Plan action to serve as a model, to the extent applicable, for future compliance requirements (see Appendix B).

Because of the Restoration Plan's complexity and the length of time for implementation of the CVPIA PEIS, there is a need to periodically develop and disseminate information that will further assist Habitat Restoration Project Managers. This could include examples of successful compliance documents to be utilized by Habitat Restoration Project Managers to increase the efficiencies involved in the environmental compliance process and to assist in developing increased familiarity with the process.

The Habitat Restoration Project Manager should proactively solicit views and suggestions from the general public, landowners, and other stakeholders early in the environmental review process.

Involvement of other interested parties, including the interested members of the public, is vital to the environmental review process. Press releases, newsletters, and announcements, as well as presentations at meetings of stakeholders or local watershed working groups and other interest group functions, can be used to keep the public and stakeholders informed about a specific Restoration Plan action. Public workshops to solicit input prior to commitment of resources on a particular alternative or method of analysis can be valuable in scoping out relevant issues for the environmental review process and to obtain public support for Restoration Plan actions. In addition, many environmental permits will require scoping and/or public involvement during the permit approval process.

Environmental Review and Permitting Timeline

The Habitat Restoration Project Manager should integrate as many related activities as possible into a single action or set of actions that can be incorporated into one permit (e.g., dredging activities in surface water channels, standard measures that can be taken to reduce potential impacts on water quality).

Through development of the environmental compliance strategy, the Habitat Restoration Project Manager should be better able to identify which of the environmental review processes needs to be started first. Through the development of the environmental compliance strategy, the Habitat Restoration Project Manager may identify certain environmental documentation requirements that are necessary for several regulations or permits. This should facilitate permitting in cases in which the Habitat Restoration Project Manager may need to comply with only one agency's requirements to achieve compliance with other environmental regulations or permit requirements. Furthermore, it may be possible to include similar actions within the same watershed into the same project utilizing one, as opposed to multiple permits from the same agency. It should also be noted that both NEPA and CEQA to a greater extent, require that a project not be piecemealed into numerous smaller projects but rather include the “whole of the action” to the extent that they are interdependent or inversely, lacking independent utility.

Anticipation of Informational Needs

The Habitat Restoration Project Manager, in coordination with the regulatory agency, should determine whether existing NEPA and/or CEQA documentation, including the CVPIA PEIS and CBDP EIS/EIR (Programmatic Documents), adequately addresses the effects of a proposed Restoration Plan action or whether supplemental documentation is required.

The environmental compliance strategy should tier from existing documentation whenever possible. The Habitat Restoration Project Manager should ensure that all mitigation requirements that have been previously identified in the Programmatic Documents are incorporated into the Restoration Plan action regardless of whether tiering or not from the Programmatic Documents. If no existing NEPA and/or CEQA documentation is available and new documentation is required, the appropriate type and level of detail should be determined in coordination with concerned agencies.

A number of the permit requirements of regulatory agencies have been anticipated and addressed in some level of detail in the CVPIA PEIS and CBDP EIS/EIR. However, each permit process has particular informational needs for compliance that may not be reflected in the previous NEPA or CEQA document. The Habitat Restoration Project Manager should follow the regulatory agency's established procedures and requirements and provide all required information and documentation. Project implementation can be delayed if information or mitigation needs of a particular permitting agency are omitted and are required to be added at the end of the project planning and permitting process. For example, if NEPA and CEQA compliance is close to completion or has been completed and it is subsequently determined that a change in the project is necessary to provide mitigation for another permit requirement, a supplemental NEPA and CEQA process may be necessary to assess the environmental effects associated with the change in the project. This could result in substantial delays in project implementation.

Review of Particular Environmental Compliance Needs

The Habitat Restoration Project Manager should be aware of the framework of the federal, state, and local regulations that govern projects before approaching the regulatory agencies.

Effective coordination with the regulatory agencies depends on the Habitat Restoration Project Manager's understanding of the general regulatory requirements that may be associated with the Restoration Plan action. To become familiar with the regulatory processes, the Habitat Restoration Project Manager should review the information in Chapter 4, as well as the permit conditions issued for other projects, staff reports, and pertinent studies. Additionally, since most projects will utilize the Programmatic Documents for tiering purposes or at a minimum the appropriate programmatic mitigation measures and strategies agreed to in the Programmatic Documents, Habitat Restoration Project Managers should be familiar with the Programmatic Documents. This highlights the need to develop an environmental compliance strategy that will aid the Habitat Restoration Project Manager in understanding not only the individual regulatory requirements, but also of the larger context and each permit's place in that process. Looking at the permitting process in this context will assist in understanding the interrelationships and repercussions of certain decisions or changes that are made in regards to the Restoration Plan action.

Assessing NEPA Compliance Needs

Summary of NEPA Compliance

- ❖ *The majority, if not all, of the Restoration Plan actions would be considered federal agency “proposals” necessitating compliance with NEPA.*
- ❖ *A small number of actions contemplated under the Restoration Plan may not be considered federal agency proposals necessitating NEPA compliance. If an action is undertaken by a non-federal project proponent and no federal agencies are involved in issuing permits or entitlements or providing funding for any portion of the project, no NEPA compliance would be necessary.*
- ❖ *It is important to note that the NEPA lead agency’s NEPA regulations must be closely followed in the preparation of the NEPA document.*
- ❖ *The process of tiering helps those implementing specific actions to eliminate repetitive discussions and allows project-specific documents to focus on site-specific issues.*
- ❖ *Subsequent, second-tier (project-specific) NEPA documents should focus on the site specific details that were not evaluated in the Programmatic Documents; however, prior to doing this it must be determined to what extent the proposed action is covered by the Programmatic Documents.*
- ❖ *The CVPIA PEIS analyzes the broad issues relating to the AFRP; therefore, the PEIS should at a minimum satisfy NEPA requirements for evaluating cumulative effects of the Restoration Plan actions.*
- ❖ *Subject to limited exceptions, the Programmatic Documents are not expected to address the site-specific environmental effects of most Restoration Plan actions in sufficient detail to satisfy NEPA compliance for specific actions.*
- ❖ *The majority of Restoration Plan actions will require project level NEPA compliance in addition to that included in the Programmatic Documents (CVPIA PEIS and/or CBDP EIS/EIR).*
- ❖ *NEPA compliance for many Restoration Plan actions may be achieved through the use of a Categorical Exclusion; however, the existence of “exceptions” could preclude the use of Categorical Exclusions in some instances.*
- ❖ *NEPA compliance for most Restoration Plan actions that do not qualify for use of a Categorical Exclusion should be achieved through the use of an EA supporting a FONSI.*
- ❖ *NEPA compliance for most Restoration Plan actions should not require preparation of an EIS.*

Introduction

The first step in developing a compliance strategy is to address environmental compliance requirements for a Restoration Plan action and to assess the level and type of environmental analysis required for NEPA compliance. The Habitat Restoration Project Manager should carefully review potential environmental issues associated with the project to prepare an overall environmental compliance strategy.

Federal agency compliance with NEPA has two major benefits. NEPA's requirement that federal agencies study and document the environmental effects of a proposed action has the benefit of disclosing the potential environmental effects of an action to the decision makers, public, and interested federal, state, and local agencies. NEPA compliance ensures that federal agencies consider the effects on the human environment prior to approving a project. The fundamental components of the environmental review, including the requirement to assess alternatives and the consequences to environmental resources, results in the federal agency making good planning decisions based on the comparative benefits and detriments of implementing one course of action over another.

Although it is also necessary for the Habitat Restoration Project Manager to have a complete understanding of all the environmental compliance needs for a particular action, NEPA compliance may require the most time in the project planning process and, therefore, NEPA compliance needs should be addressed at the initial stages of development of a strategy for environmental compliance. NEPA requires the federal agency to ensure compliance during all aspects of the NEPA process; if the Habitat Restoration Project Manager is not a federal agency representative, the project manager should work closely with the federal agency to assist in NEPA compliance.

NEPA Coordination

The following individuals may be contacted by Habitat Restoration Project Managers for the types of assistance specified:

- ♦ For coordination of USFWS internal procedures for sign-off of NEPA decision documents: *AFRP Program Manager*, Sacramento-San Joaquin Estuary Fishery Resource Office, 4001 N. Wilson Way, Stockton, CA 95205-2486, voice: (209) 946-6400, fax: (209) 946-6355
- ♦ For NEPA compliance issues for particular actions: *AFRP Assistant Program Manager* in the USFWS office at 4001 N. Wilson Way, Stockton, CA 95205-2486, (209) 946-6400, or *AFRP Habitat Restoration Coordinator*, Northern Central Valley Fish and Wildlife Office, 10950 Tyler Road, Red Bluff, CA 96080, (916) 527-3043
- ♦ For review of an action to determine the need for NEPA compliance: *Regional Environmental Coordinator* in Portland, Oregon, (503) 231-2068
- ♦ For specific questions about regulatory compliance requirements of Restoration Plan actions: *Environmental Solicitor* at Jones & Stokes Associates, (916) 737-3000
- ♦ For general questions on environmental regulations and permit processes: *Chief, Habitat Conservation Division* in the USFWS office at 3400 Cottage Way, Sacramento, CA 95825, (916) 414-6600

Format Requirements

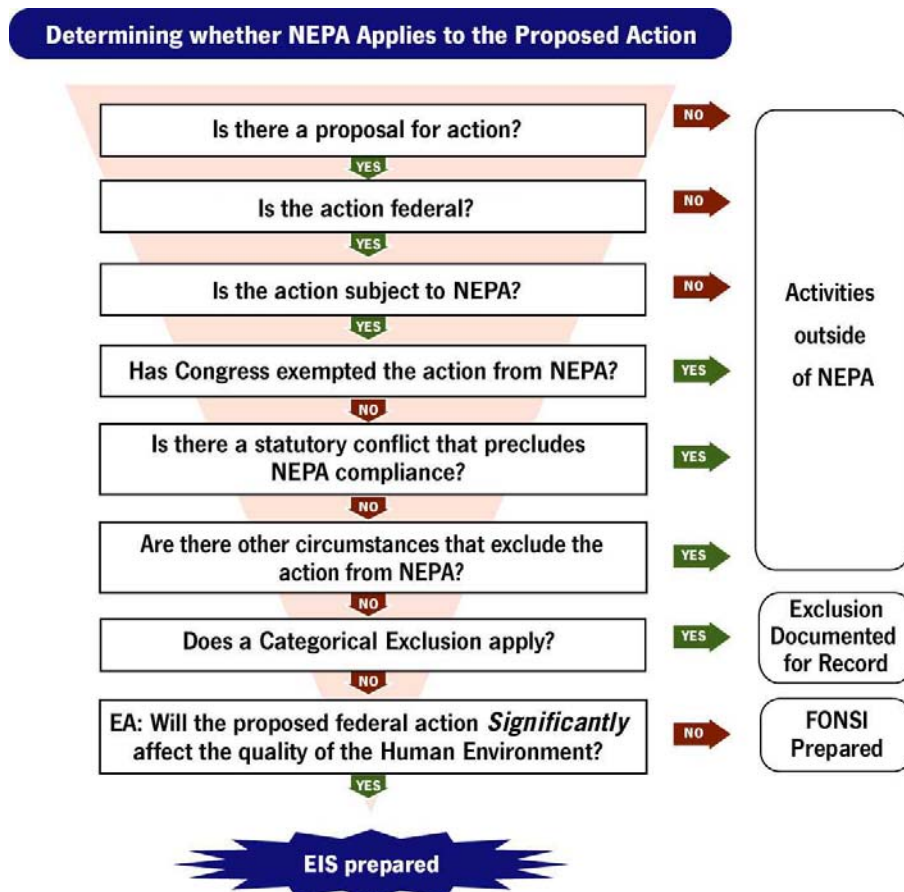
All NEPA documents must follow the NEPA lead agency's required format. Sample formats for various NEPA documents may be found in Appendix B. Potential NEPA lead agencies include: USFWS, USBR, USACE, and NOAA Fisheries.

Public Involvement

An important component of the NEPA process is public disclosure. Prior to starting the formal NEPA process, it is recommended that the Habitat Restoration Project Manager/federal agency involve all interested parties, including public agencies and private entities, in the project planning process. The NEPA process also provides for public agency and private entity involvement at several points. As described in Chapter 4, EA/FONSI must be noticed and are typically circulated for public review. EISs must involve the public through a formal scoping process; review and opportunity for comment on the draft EIS; and notice and review of the final EIS, including responses to comments on the draft EIS. Habitat Restoration Project Managers should review the applicable NEPA lead agency regulations for specific public notice and involvement requirements.

Step One: Determine Whether the Action Is Considered a Federal Agency "Proposal"

The majority, if not all, of the Restoration Plan actions would be considered federal agency "proposals" necessitating compliance with NEPA.



For all federal agency proposals for action, NEPA requires an assessment of the proposed action's effect on the human environment. These federal actions are those with effects that may be major and that are potentially subject to federal control and responsibility. These actions include:

- ❖ Projects directly undertaken by the federal agency; or
- ❖ Projects for which the federal agency issues a permit or other authorization or funding, in whole or in part, for the proposed action.

State or private actions may be considered federal agency actions for purposes of requiring NEPA compliance if they are funded, financed, aided, controlled, permitted, licensed, enabled, caused, or approved by the federal government.

A small number of actions contemplated under the Restoration Plan may not be considered federal agency proposals necessitating NEPA compliance. If an action is undertaken by a non-federal project proponent and no federal agencies are involved in issuing permits or entitlements or providing funding for any portion of the project, no NEPA compliance would be necessary. An example of this type of project would be one in which the California Department of Fish and Game (DFG) or local water district has taken the lead for project implementation and there is no requirement to comply with the federal ESA; if there is no additional federal permit requirement (e.g., no Section 404 Individual Permit is required or the

action is authorized under a Nationwide Permit or similar General Permit), the project may move forward without NEPA compliance. As discussed below, environmental analysis for CEQA compliance may still be required for those actions not subject to NEPA based on State or local agency discretionary action.

Determining the Lead Agency

Federal agencies likely to be lead agencies for Restoration Plan actions include USFWS, U.S. Bureau of Reclamation (USBR), U.S. Army Corps of Engineers (USACE), and National Oceanic and Atmospheric Administration Fisheries (NOAA Fisheries) (see Chapter 4 for descriptions of relevant permits and permitting processes for federal agencies).

NEPA requires all federal agencies to assess the environmental effects of their actions. Actions are defined as new or continuing federal activities that are directly implemented, financed, assisted, conducted, or approved by a federal agency.

If more than one federal agency is involved, the lead agency is typically determined according to:

- ❖ Magnitude of involvement,
- ❖ Approval or disapproval authority over the proposed action,
- ❖ Expertise with regard to environmental effects,
- ❖ Duration of involvement, and
- ❖ Sequence of involvement.

It is important to note that the NEPA lead agency's NEPA regulations should be closely followed by the Habitat Restoration Project Manager in the preparation of the NEPA document.

Cooperating Agencies

Typically, for actions that require involvement of more than one federal agency, only one federal agency is designated as the lead to prepare the environmental documentation for the proposed action. A cooperating agency may be any federal agency other than the lead agency that has discretionary authority over the proposed action, jurisdiction by law, or special expertise with respect to the environmental impacts expected to result from an action. NEPA requires that cooperating agencies having discretionary authority over the proposed action be involved in the preparation of the NEPA document.

Preparing the NEPA Document

The federal agency responsible for a particular action triggering NEPA is ultimately responsible for NEPA compliance; however, preparation of the NEPA document may be delegated to the state or local agency proposing the action or preparing the CEQA compliance document. Also, the federal agency may delegate preparation of NEPA documentation to a consultant or private applicant. Although entities other

than the federal agency may prepare the NEPA document, the federal agency is responsible for exercising independent judgment in ensuring the document meets the requirements of NEPA, the Council on Environmental Quality (CEQ) NEPA Regulations, and the federal agency's (lead agency's) specific NEPA regulations. For more information on delegating NEPA responsibilities, Habitat Restoration Project Managers should refer to the delegation rules for preparing an EIS (40 C.F.R. 1506.5).

Step Two: Tiering Options

Section 3406(b)(1) of the CVPIA set the broad goal of sustaining natural production of anadromous fish in Central Valley rivers and streams at levels not less than twice the average levels attained during 1967-1991. To comply with the 3406(b)(1) directive, the AFRP staff prepared the Restoration Plan to address anadromous fish resource issues in Central Valley streams that are tributaries to the Delta. Additionally, the CVPIA contains the directive that anadromous fish populations be doubled consistent with federal trust responsibilities to protect the fishery resources of affected federally recognized Native American tribes, consistent with all requirements of federal and California law, while achieving a reasonable balance among competing demands for use of CVP water. Accordingly, the CVPIA PEIS, prepared by USBR and USFWS, analyzes the broad regional issues associated with implementing the CVPIA provisions in compliance with NEPA.

Tiering from the CVPIA PEIS

The PEIS states that "specific actions taken by [USFWS] to carry out provisions of the CVPIA may require additional technical and environmental documents and analyses" and that "these other technical and environmental documents may incorporate the findings of the PEIS by reference." In this approach, known as "tiering," a first-tier document such as the CVPIA PEIS addresses the broad issues relating to a project. Additional environmental documents on project-specific impacts are prepared when necessary, thus avoiding duplicate considerations of broad policy decisions when future individual aspects of the program are implemented. These second-tier documents must incorporate the PEIS by reference, briefly summarizing pertinent discussions in the first-tier document and concentrating on site-specific issues.

The process of tiering helps those implementing specific CVPIA actions (such as the Habitat Restoration Project Managers) to eliminate repetitive discussions and allows project-specific documents to focus on site-specific issues. The CVPIA PEIS states that "[The CVPIA PEIS is] programmatic in nature and is evaluating the system-wide benefits and impacts of several broad alternatives. Therefore, specific details, such as impacts due to the siting of fish screens or gravel restoration locations, cannot be evaluated due to the broad nature of the PEIS study area." Subsequent, second-tier NEPA documents should focus on the site specific details that were not evaluated in the CVPIA PEIS; however, prior to doing this it must be determined to what extent the proposed action is covered by the CVPIA PEIS.

Assessing Whether an Action Is within the CVPIA PEIS Study Area

NEPA documents for some project-specific actions can reference the CVPIA PEIS, while others will need to expand on the study-area description in the PEIS.

The study area of the CVPIA PEIS is sufficiently broad so that its analysis encompasses the environmental effects and the entire spectrum of anticipated CVPIA actions. The CVPIA PEIS includes in its study area those areas that could be directly affected by changes in CVP operations or actions implemented under the CVPIA, including the Restoration Plan. The study area necessarily includes the watersheds along the west and east sides and along the valley floor of the Sacramento and San Joaquin river basins. These watersheds, as identified in the AFRP, extend to peaks of the Coast Range and the Sierra Nevada. It should be noted that not all of the CVPIA PEIS technical evaluations include analyses in the full study area. Accordingly, the CVPIA PEIS must be reviewed to determine whether the study area is broad enough to encompass the proposed action. If it is not broad enough, the study area must be expanded in the subsequent NEPA document to ensure that all environmental effects are adequately identified and evaluated. In this situation, the proposed action cannot rely entirely on the previous broad program level analysis in the CVPIA PEIS and will have to supplement such analysis to include the impacts associated with the expanded study area.

Assessing Whether an Action Is within the Scope of the CVPIA PEIS Impact Analysis

The CVPIA PEIS analyzes the broad issues relating to the AFRP; therefore, the PEIS should satisfy NEPA requirements for evaluating cumulative effects of the Restoration Plan actions.

The CVPIA PEIS, however, is not expected to analyze the AFRP in sufficient detail to preclude the need for additional NEPA compliance for most Restoration Plan actions. With the broad environmental issues addressed in the PEIS, it may be appropriate for the majority of Restoration Plan actions to achieve NEPA compliance through the use of a Categorical Exclusion or EA supporting a FONSI.

CVPIA PEIS Direction and AFRP Coverage

According to the CVPIA PEIS, actions implemented under certain provisions of the CVPIA could be undertaken without project-specific environmental documentation because these provisions were considered and sufficiently analyzed in the PEIS. Table VI-1 of the PEIS indicates that no additional environmental documentation would be required for actions undertaken under Sections 3406(b)(8), 3406(b)(9), 3406(b)(19), and 3406(d)(1) and that additional environmental documentation may not be required for actions undertaken under Section 3406(b)(2).

As indicated in the Restoration Plan, the following two flow management actions would be implemented under Section 3406(b)(9); these actions therefore could be undertaken without further NEPA documentation:

- ❖ *Upper mainstem Sacramento River* - Implement a schedule for flow changes that avoids, to the extent controllable, dewatering redds and isolating or stranding juvenile anadromous salmonids, consistent with SWRCB Order 90-5.
- ❖ *American River* - Reduce and control flow fluctuations to avoid and minimize adverse effects on juvenile salmonids.

Additionally, the Restoration Plan indicates that the following Delta action would be implemented under Section 3406(b)(2); this action therefore, could likely be undertaken without further NEPA documentation:

- ❖ *Delta* - Increase the level of protection targeted by the May and June X2 requirements to a 1962 level of development.

Several other Restoration Plan actions for developing and implementing river flow regulation plans, long-term water allocation plans, or flow schedules (on the upper mainstem Sacramento River, American River, Stanislaus River, and mainstem San Joaquin River) and several Delta actions would be implemented under Section 3406(b)(2) in combination with Section 3406(b)(1)(B) or both Sections 3406(b)(1)(B) and 3406(b)(3). Table VI-1 indicates that individual actions under Section 3406(b)(1) (the AFRP) may require further environmental documentation and that actions under 3406(b)(3) would require further documentation. Accordingly, these actions are not considered to be excluded from the requirement for further environmental documentation.

CVPIA PEIS Analysis Coverage

As noted above, the CVPIA PEIS addresses implementation of the AFRP. The PEIS analyzes the range of flows that have been proposed to meet the requirements of the CVPIA. Specifically, the PEIS assesses the basin and Delta impacts of a range of flows and structural modifications proposed for doubling natural production of anadromous fish. The range is intended to bracket the flows that are identified by USFWS (concurrently developed in the AFRP) to successfully accomplish the flow-related provisions of the AFRP. The PEIS identifies the regional socioeconomic and biological impacts of the range of flow modifications. The PEIS includes analyses of:

- ❖ Monthly flows, stream depths, water quality, and temperatures that affect fishery, vegetation, and wildlife resources in major streams identified for each geographic region;
- ❖ Monthly changes in the capability of the CVP facilities and other facilities to provide supplemental water to contractors and meet fish and wildlife needs, including use of conveyance facilities by CVP units and each geographic region;
- ❖ Monthly changes in CVP storage releases and associated power production;
- ❖ Changes in fishery habitat for anadromous and special-status species by species/race/run or guilds, area of vegetation, and wildlife resources in and along major rivers in each geographic region;
- ❖ Annual changes in cost of CVP water in each CVP unit resulting from changes in CVP water deliveries and patterns, cost to purchase supplemental water from willing sellers, and the restoration fund;
- ❖ Annual changes (regarding community economics, social issues, land use, agricultural economics, municipal and industrial water supply economics, and power production) in each geographical region resulting from changes in CVP water release and delivery amounts and patterns; and

- ❖ Annual changes to recreation, recreation economics, and associated fishery economics in each geographic region resulting from changes in anadromous fish populations and availability of CVP and supplemental water.

The CVPIA PEIS also includes an analysis of the cumulative effects of implementing the CVPIA action categories, including the Restoration Plan actions. Consequently, project-specific NEPA compliance documents can reference the PEIS and should not need to include additional discussions of cumulative effects, unless the proposed action is outside of the CVPIA PEIS study area, in which case some additional analysis or discussion of such impacts will be required.

Subsequent Actions

The CVPIA PEIS states that "subsequent actions may require preparation of a tiered EIS or EA, or the action may be subject to a Categorical Exclusion." (See below for discussion of EISs, EAs, and Categorical Exclusions). A recommended "Categorical Exclusion checklist" (Appendix B) can be completed to determine whether an EA or an EIS should be prepared. The PEIS states that if the lead agency is unsure whether significant adverse impacts would occur, a tiered EA may be prepared to summarize findings and obtain public input. If the lead agency determines that "the action would probably lead to significant adverse impacts that would be greater than discussed in the PEIS, or if multiple options must be considered in equal detail, a tiered EIS should be prepared."

Incorporation by Reference

The EIS should incorporate by reference the relevant information contained in the CVPIA PEIS, other programmatic documentation (CBDP EIS/EIR), and other NEPA documents (such as information contained in an EA or EIS prepared for other proposed Restoration Plan actions). The incorporated material must be cited and summarized in the EIS and the lead agency must make such material available for inspection. Information that is incorporated by reference includes material from NEPA documents for other proposed actions with similar environmental effects, technical studies, documents prepared for compliance with other federal laws, and documents prepared in compliance with state environmental assessment laws.

Tiering from CBDP EIS/EIR

The CBDP Program is a cooperative effort of eighteen State and federal agencies with regulatory and management responsibilities in the Bay-Delta to develop a long-term plan to restore ecosystem health and improve water management for beneficial uses of the Bay-Delta system. As a result of the CBDP Program being developed subsequent to the CVPIA, AFRP actions have been integrated with the CBDP Ecosystem Restoration Program. Specifically, the CBDP ROD, Attachment 3, Implementation Memorandum of Understanding identifies AFRP actions as CBDP Category A. Category A includes programs and funding that should be consistent with the CBDP Program objectives and priorities and submitted to the CBDP Policy Group for review and recommended approval. Accordingly, AFRP projects have been functionally integrated with the CBDP ERP proposal solicitation process to select projects for funding.

The AFRP has participated in the project selection process and considered funding program-appropriate projects solicited through the CBDP ERP. The decision as to whether to tier from CBDP or CVPIA programmatic documents is a pragmatic decision based on what document provides the most relevant and useful information; however, it is anticipated that tiering from the CVPIA PEIS will most likely provide the most relevant information for Restoration Plan actions. In addition to tiering, it may be appropriate to incorporate by reference either CBDP, CVPIA, or both programmatic documents in certain situations. Regardless of whether the Programmatic Documents are tiered from or not it is essential that the project-level NEPA analysis meets the policy commitments described in the CBDP ROD that each project implementing the Bay-Delta Program will be subject to the appropriate type of environmental analysis and will evaluate and use the appropriate programmatic mitigation strategies described in the CBDP EIS/EIR and the ROD (see *CALFED Guide to Regulatory Compliance for Implementing CALFED Actions, Vol. 1 and 2*). In addition to NEPA compliance, Restoration Actions are required to tier from CBDP's endangered species compliance programmatic documents via preparation of an Action Specific Implementation Plan (ASIP) for programmatic compliance with FESA, CESA, and the NCCPA (see p. 2-59 and 4-39 for ASIP discussion). For a complete discussion of the CBDP Program and its programmatic mitigation strategies please see the "*CALFED Bay-Delta Program, Guide to Regulatory Compliance for Implementing CALFED Actions, Vol. 1 and 2*."

Preparing a Written Determination

If it is determined that the PEIS sufficiently addresses the proposed Restoration Plan action to satisfy the NEPA requirements for implementation of that action, it is recommended that the Habitat Restoration Project Manager prepare a written analysis for the project file documenting the process used to determine NEPA compliance. Although this written analysis is not specifically required by NEPA, the federal agency should document how it came to the conclusion that the PEIS sufficiently addressed the environmental impacts of the proposed action and that no other NEPA analysis is required. Preparation of an EA may be appropriate to document the fact that all impacts of the proposed action have been covered within the PEIS.

Important Tiering Considerations

The Habitat Restoration Project Manager will need to focus on the following issues when assessing whether a proposed action is analyzed in the Programmatic Documents to a level of detail sufficient to address NEPA compliance for implementing the action. *Each of the following criteria must be met for the Programmatic Documents to fully cover the action from a NEPA compliance perspective.*

- ❖ The anticipated environmental effects, including cumulative effects, of an action or an activity similar to the proposed action must be addressed in the Programmatic Document. Additional NEPA compliance may not be necessary for the proposed action to be implemented, even though the action was not specifically identified at the time of preparation of the Programmatic Documents (must be substantially similar). However, if the description of the proposed action has changed substantively from the time it was contemplated and addressed in the Programmatic Documents, additional NEPA compliance may be warranted.
- ❖ The location of the proposed action (or similar action) must be included in the Programmatic Document's study area. Additional NEPA compliance will be required for the action to be

implemented if the location is not within the study area or if the topic-level discussion in the Programmatic Document (e.g., fisheries, cultural resources, or air quality) did not cover the location of the proposed action.

- ❖ The proposed action (or similar action) must be analyzed in the Programmatic Document; the site-specific impacts of the proposed action (or similar action) should be identified in the Programmatic Document. Additional NEPA compliance may be required for the action to be implemented if impacts of the proposed action are described in the Programmatic Document as part of analyses of a broad category of activities. For example, it is possible that air quality impacts are sufficiently covered in the Programmatic Document at a project-specific level but that fisheries impacts are not. Consequently, the scope of the action-specific NEPA compliance documents can be reduced to just those resource impacts not adequately covered by the Programmatic Document.
- ❖ The specific mitigation for the impacts of the proposed action (or similar action) should be identified in the Programmatic Document. Additional NEPA compliance for implementing the proposed action may be required if the Programmatic Document presents programmatic mitigation for impacts of the broad category of activities, but not any necessary project- and site-specific mitigation.

Step Three: Determining the Appropriate NEPA Document

As stated above, the Programmatic Documents (CVPIA PEIS and/or CBDP EIS/EIR) are not expected to address the environmental effects of most Restoration Plan actions in sufficient detail to satisfy NEPA compliance for specific actions. In fact, the CVPIA PEIS specifically indicates that the following issues are not analyzed in the PEIS and will require "site-specific NEPA documents":

- ❖ Acquisition actions to improve monthly flows, stream depths, water quality, and water supply availability in local streams, where restoration projects will be completed;
- ❖ Changes in total fisheries and wildlife habitat values and area of vegetative resources in specific reaches of streams or in refuges as addressed in individual projects;
- ❖ Changes in site-specific fish habitat for specific fish species/race/runs;
- ❖ Changes in land use, industrial or municipal operations (such as changes in gravel mining operations), or agricultural operations in the vicinity of specific projects; and
- ❖ Changes in water conveyance or land use.

Additional NEPA compliance for these actions may be achieved in several ways. A program-level analysis in addition to the CVPIA PEIS could be prepared to address the larger Restoration Plan as an entire program or by watershed or to address a group of similar actions (e.g., water management and acquisition or fish screens), or site-specific analyses may be prepared for each individual action or groups of actions.

Initial Considerations

Conducting a Project-Level (Action-Specific) Analysis

The majority of Restoration Plan actions will require project level NEPA compliance in addition to the CVPIA PEIS and/or CBDP EIS/EIR (Programmatic Documents). Regardless of whether an action tiers off of the Programmatic Documents, it is essential that the project-level NEPA analysis meet the policy commitments described in the CBDP EIS/EIR ROD that each project implementing the Bay-Delta program will utilize the appropriate programmatic mitigation strategies described in the CBDP EIS/EIR ROD.

At the time when a particular action is proposed for implementation, it should be determined whether the Programmatic Documents have adequately addressed all or some of the environmental effects of the proposed action (see discussion on tiering above). If no additional program-level analysis has been prepared for the Restoration Plan, implementation of most Restoration Plan actions will require additional NEPA compliance. NEPA compliance for Restoration Plan actions may be completed in a project-level analysis for the separate individual actions or a combination of a group of actions within the same watershed.

NEPA compliance for the specific Restoration Plan actions will be in the form of either a Categorical Exclusion, EA, FONSI, or EIS.

Combining Actions

It is recommended that one combined project-level NEPA analysis include as many actions as can adequately be described (so that environmental effects can be assessed) and are ripe for decision (not planned so far in the future that they are not reasonably foreseeable) to avoid the higher costs of continual preparation of separate NEPA documents that may require separate public and agency comment periods and to enable USFWS to better analyze cumulative impacts of the various individual actions within the watershed (to extent not already analyzed in the Programmatic Documents).

Combining actions within the same watershed for purposes of complying with NEPA would not be considered a program analysis. The reason for this is that the analysis would apply only to those Restoration Plan actions that are identified and described in enough detail for site-specific environmental impacts to be satisfactorily addressed so that no additional NEPA document would be required prior to implementation.

It is not recommended to try to include every action that could be implemented within the watershed in the combined project-level analysis because inadequate descriptions of actions could lead to inaccuracies in the assessment of environmental effects and the description of such actions could change substantially if they will not be implemented in the near term.

Watershed Analysis of Actions beyond the Restoration Plan

Combining and integrating environmental documentation of other restoration planning efforts within the same watershed, such as CBDP or Category III restoration actions, with the combined project-level analysis of the Restoration Plan actions within that watershed may be advantageous, minimizing costs, shortening implementation schedules, and providing for a better analysis of cumulative impacts (to extent not already evaluated in CVPIA PEIS).

The combined project-level analysis for Restoration Plan actions within a particular watershed may be conducted together with preparation of a watershed management plan to maximize efficiencies regarding the effort and cost of preparing an environmental analysis and the process for public and agency review. Additionally, the NEPA compliance document for the combined actions within a particular watershed may be used by state or local agencies for CEQA compliance (see below). It is recommended that the NEPA and CEQA efforts be combined in a joint document if the state or local agencies requiring CEQA compliance can be identified in the early stages of preparation of the combined project-level analysis for Restoration Plan actions within the particular watershed (see "Prepare Joint NEPA/CEQA Documents When Appropriate" under "Assessing CEQA Compliance Needs" on p. 2-36).

Certain Restoration Plan actions within a particular watershed may not be sufficiently defined, at the time the NEPA documentation is being prepared, to be combined into one project-level analysis for NEPA compliance. In this case, separate NEPA compliance for these subsequent project-specific Restoration Plan actions would be required. *It is recommended that USFWS identify sets of actions in each watershed that are ready for environmental documentation and prepare a joint NEPA/CEQA document for each watershed or for similar watersheds (i.e., Deer and Mill Creeks) that encompasses the largest number of restoration actions possible.*

Cumulative Impact Analysis

Certain actions may not be described sufficiently for site-specific environmental impacts to be analyzed in the NEPA compliance document for the Restoration Plan action(s). An accurate assessment of the environmental effects of the proposed actions may not be possible where specific detail on project components, size, and location are lacking. These actions should be addressed in the combined project-level analysis in the cumulative impacts section; future NEPA compliance for these actions would be required. The cumulative impact analysis from the prior combined project-level analysis may be used for the NEPA compliance of the future action, as long as the prior cumulative impact analysis included the underlying action, and no other relevant actions that were not part of the prior cumulative impact analysis have been implemented or proposed.

NEPA Document Options

Categorical Exclusions

NEPA compliance for many Restoration Plan actions may be achieved through the use of a Categorical Exclusion; however, the existence of "exceptions" could preclude the use of Categorical Exclusions in some instances.

At the outset, the Habitat Restoration Project Manager should determine whether an action falls within the lead federal agency's list of Categorical Exclusions (sometimes known as "CEs", "CXs", or "CATEXs"). Categorical Exclusions are classes of actions that are determined by each federal agency to not have individual or cumulative significant effects on the human environment. If the Categorical Exclusion applies, no further NEPA compliance may be required. Categorical Exclusions are not the equivalent of statutory exemptions; therefore, if exceptions to Categorical Exclusions apply (sometimes referred to as "extraordinary circumstances") the Categorical Exclusions do not apply.

Each federal agency's NEPA regulations list actions that, when considered individually and cumulatively, do not have significant effects on the human environment and are therefore, categorically excluded from NEPA documentation.

USFWS Categories

The U.S. Department of Interior NEPA Regulations (516 DM 2, Appendix 1) and USFWS NEPA Regulations (516 DM 6, Appendix 1) list those particular categories of actions that may achieve NEPA compliance through the use of a Categorical Exclusion. Relevant categories for the Restoration Plan actions are as follows:

- ❖ Legislative proposals of an administrative or technical nature, including such things as changes in authorizations for appropriations, and minor boundary changes and land transactions, or those having primarily economic, social, individual or institutional effects (516 DM 2, Appendix 2, 1.9).
- ❖ Changes or amendments to an approved action when such changes have no potential environmental impact or have minor potential environmental impact (516 DM 6, Appendix 1, 1.4[A][1]). Restoration Plan actions that could fall into this category include riparian restoration and flow increases.
- ❖ The acquisition of real property obtained either through discretionary acts or when required by law (516 DM 6, Appendix 1, 1.4[A][4]). Restoration Plan actions that could fall into this category include acquisition of easements.
- ❖ Research, inventory, and information collection activities directly related to the conservation of fish and wildlife resources that involve negligible animal mortality or habitat destruction, no introduction of contaminants, and no introduction of organisms not indigenous to the affected ecosystem (516 DM 6, Appendix 1, 1.4[B][1]). Restoration Plan actions that could fall into this category include research and monitoring efforts.

- ❖ The operation, maintenance, and management of existing facilities and routine recurring management activities and improvements, including renovations and replacements, that result in no changes or only minor changes in the use, and have no environmental effects or negligible environmental effects onsite or in the vicinity of the site (516 DM 6, Appendix 1, 1.4[B][2]). Restoration Plan actions that could fall into this category include additions of fish screens and ladders.
- ❖ The construction or addition of small structures or improvements, including structures and improvements for the restoration of wetland, riparian, instream, or native habitats, which result in no changes or only minor changes in the use of the affected local area. Examples include the construction of water control structures, the construction of small berms or dikes, and the development of limited access for routine maintenance and management purposes. (516 DM 6, Appendix 1, 1.4[B][3].) Restoration Plan actions that could fall into this category include riparian restoration.
- ❖ The reintroduction (e.g., stocking) of native, formerly native, or established species into suitable habitat within their historical or established range (516 DM 6, Appendix 1, 1.4[B][6]). Restoration Plan actions that could fall into this category include reintroduction of spring-, winter-, fall-, or late-fall-run Chinook salmon and steelhead into restored reaches of historical creek habitats.
- ❖ Consultation and technical assistance activities directly related to the conservation of fish and wildlife resources (516 DM 6, Appendix 1, 1.4[B][8]).
- ❖ Issuance, denial, suspension, and revocation of permits for activities involving fish, wildlife, or plants (under 50 CFR Chapter 1) that are endangered or threatened species, species listed under the Convention on International Trade in Endangered Species, marine mammals, wild exotic birds, migratory birds, eagles, or injured wildlife, when such permits cause no environmental disturbance or negligible environmental disturbance (516 DM 6, Appendix 1, 1.4[C][1]).
- ❖ Issuance of ESA Section 10(a)(1)(B) "low effect" incidental take permits that, individually or cumulatively, have a minor or negligible effect on the species covered in the habitat conservation plan (516 DM 6, Appendix 1, 1.4[C][2]).
- ❖ Issuance, re-issuance, or denial of a special use permit for administration of specialized uses, including agricultural uses or other economic uses that result in no environmental effects or negligible environmental effects (516 DM 6, Appendix 1, 1.4[C][5] and [6]).
- ❖ Actions where USFWS has concurrence or co-approval with another federal agency and the action is a Categorical Exclusion for that agency (516 DM 6, Appendix 1, 1.4[C][8]).
- ❖ Financial assistance to state, local, or private actions (e.g., grants or cooperative agreements) where the environmental effects are minor or negligible (516 DM 6, Appendix 1, 1.4[E][1]). Restoration Plan actions that could fall into this category include conservancy watershed management plan development.

CVPIA PEIS Categories

The PEIS lists several actions that may be subject to Categorical Exclusions. These include training activities; research and data collection activities; planning studies; classification and certification of irrigable land; minor acquisition of lands and rights-of-way; minor construction activities associated with authorized projects; maintenance, rehabilitation, and replacement of facilities of similar size and location; transfer of operation and maintenance responsibilities; and modification of rates.

Exceptions to the Use of Categorical Exclusions

A federal lead agency is not required to prepare a detailed environmental review (an EA and either a FONSI or an EIS) for NEPA compliance if an action qualifies for a Categorical Exclusion. However, if exceptions or extraordinary circumstances exist, as defined by the federal agency's NEPA regulations, preparation of an EA and a FONSI or an EIS may be required.

The U.S. Department of Interior NEPA Regulations (516 DM 2, Appendix 2) list those particular exceptions that, if present, do not allow use of the Categorical Exclusion. The following is an excerpt from DOI's NEPA regulations regarding exceptions that may apply to individual actions within Categorical Exclusions for the Restoration Plan actions. A NEPA exclusion does not apply for actions that may:

- ❖ Have adverse environmental effects on unique geographic characteristics such as historic or cultural resources; park, recreation or refuge lands; wilderness areas; wild and scenic rivers; sole or principle drinking water aquifers; prime farmlands; wetlands; floodplains; or ecologically significant or critical areas, including those listed on the U.S. Department of Interior's National Register of Natural Landmarks (516 DM 2, Appendix 2, 2.2)
- ❖ Establish a precedent for future action with potentially significant environmental effects (516 DM 2, Appendix 2, 2.5)
- ❖ Be directly related to other actions with individually insignificant but cumulatively significant environmental effects (516 DM 2, Appendix 2, 2.6)
- ❖ Have adverse effects on properties listed or eligible for listing on the National Register of Historic Places (516 DM 2, Appendix 2, 2.7)
- ❖ Have adverse effects on species listed or proposed for listing as threatened or endangered under the federal ESA, or have an adverse effect on designated critical habitat (516 DM 2, Appendix 2, 2.8)
- ❖ Require compliance with Executive Order 11988 (Floodplain Management), Executive Order 11990 (Protection of Wetlands), or the Fish and Wildlife Coordination Act (516 DM 2, Appendix 2, 2.9)
- ❖ Threaten to violate a federal, state, local, or tribal law or requirement imposed for the protection of the environment (516 DM 2, Appendix 2, 2.10)

Documentation That No Exceptions Exist

If the specific action qualifies for a Categorical Exclusion, the Habitat Restoration Project Manager should prepare written documentation of the appropriateness of the particular Categorical Exclusion and should discuss why no exceptions exist.

Environmental Assessment

NEPA compliance for most Restoration Plan actions that do not qualify for use of a Categorical Exclusion should be achieved through the use of an EA supporting a FONSI.

Where no Categorical Exclusion is appropriate, the Habitat Restoration Project Manager/federal agency should prepare an EA (unless lead agency's NEPA regulations state that the proposed action normally requires preparation of an EIS) to determine whether the specific Restoration Plan action has the potential to cause significant environmental effects to the human environment.

Example Environmental Assessment Checklist

Environmental Issue *	No Effect	Less Than Significant Effect	Significant Effect	Explanation
Aesthetics and Urban Design				
Agricultural Resources				
Biological Impacts (including wetlands and special-status species)				
Geology and Soils				
Hydrology and Water Quality				
Mineral Resources				
Population Growth and Housing				
Public Services (e.g., water, sewer waste)				
Transportation and Traffic				
* For each environmental issue, a federal agency must determine whether direct effects, indirect effects, and cumulative effects would be significant.				

USFWS Guidance

The USFWS NEPA Regulations (516 DM 6, Appendix 1) list those particular actions that normally require preparation of an EA. Relevant actions for the Restoration Plan actions are as follows:

- ❖ Proposals to establish most new refuges and hatcheries; and most additions and rehabilitations to existing installations (516 DM 6, Appendix 1, 1.5[A])
- ❖ Any habitat conservation plan that does not meet the definition of "low effect" in the Section 10(a)(1)(B) Handbook (516 DM 6, Appendix 1, 1.5[B])

Content of an Environmental Assessment

The EA analysis leads to preparation of a FONSI or an EIS (see below). At a minimum, the EA should include a brief discussion of the need for the proposed action; alternatives to the proposed action; environmental effects of the proposed action and alternatives; a listing of agencies and persons consulted in the preparation of the EA; and supporting technical data or appendices documenting why the action does not significantly affect the quality of the human environment, including references to the CVPIA PEIS or other program EIS. The level of detail and depth of impact analysis should normally be limited to that needed by the federal agency to determine whether there are significant environmental effects. The level of significance is determined based on the judgment of the lead agency, using scientific and factual data to determine whether there has been a substantial adverse change in the physical environment.

The preparer of the EA should be aware of NEPA's definition of "significantly", which relates to "context" and "intensity" (40 CFR 1508.27). Context means that the significance of the action "must be analyzed in several contexts such as society as a whole, the affected region, the affected interests, and the locality" (40 CFR 1508.27(a)). Intensity refers to the severity of the impact. According to the CEQ NEPA regulations (40 CFR 1508.27(b)), the federal agency preparing the EA should consider the following:

- ❖ Adverse effects associated with "beneficial projects";
- ❖ Effects on public health or safety;
- ❖ Unique characteristics of the geographic area (e.g., historic resources, park lands, prime farmland, wetlands, wild and scenic rivers, ecologically critical areas);
- ❖ Degree of controversy;
- ❖ Degree of highly uncertain effects or unique or unknown risks;
- ❖ Precedent-setting effects;
- ❖ Cumulative effects;
- ❖ Adverse effects on scientific, cultural, or historical resources;
- ❖ Adverse effects on endangered or threatened species or designated critical habitat (pursuant to the Endangered Species Act); and

- ❖ Violations of federal, state, or local environmental law.

Environmental Commitments in an Environmental Assessment

To facilitate use of a FONSI rather than preparation of an EIS, mitigation to reduce impacts of a proposed action to a less-than-significant level, as identified in the CVPIA PEIS, in another program EIS, or through initial preparation of the EA, should be incorporated into the project before the EA is issued to the public.

The Habitat Restoration Project Manager should proactively seek to add mitigation for proposed significant impacts to avoid the need to prepare an EIS. Mitigation need not necessarily come from the CVPIA PEIS and may be incorporated from other documents, including, but not limited to, other NEPA documents. However, all relevant mitigation measures in the CVPIA PEIS must be incorporated into the proposed action.

Environmental Assessment Conclusions

Based on the results of the EA (and using the information from the CVPIA PEIS, other program EIS, or other NEPA documents prepared for similar actions within the same area), the Habitat Restoration Project Manager (or federal agency, if the project manager is not with a federal agency) may determine whether it is necessary to prepare an EIS for implementation of the proposed action (significant affect to the quality of the human environment). If it is not necessary to prepare an EIS, the Habitat Restoration Project Manager (or federal agency) prepares a FONSI.

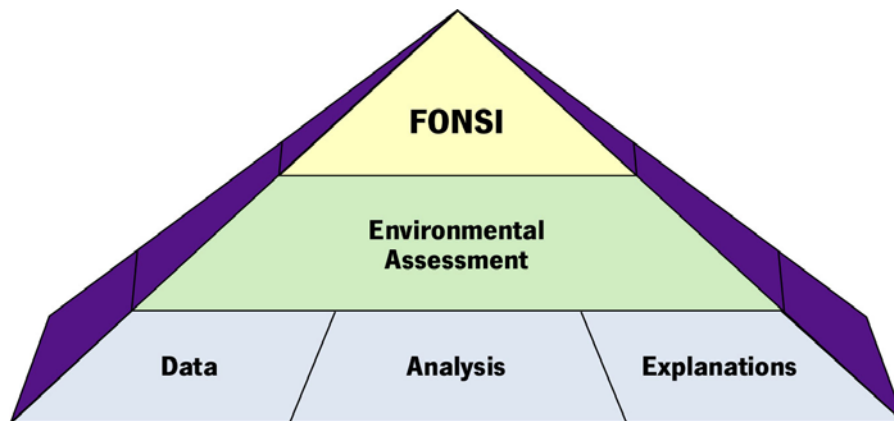
Finding of No Significant Impact

NEPA compliance for most Restoration Plan actions should be achieved through a FONSI (with or without incorporation of mitigation), especially if the EAs tier off a program analysis addressing the cumulative effects of related and reasonably foreseeable future actions.

If there is no potential for significant environmental effects of a specific action, a FONSI may be prepared. Although not specifically authorized by NEPA, the courts have approved the use of a "mitigated" FONSI, in which mitigation has been incorporated into the action, should be prepared to reduce potential impacts to a less-than-significant level.

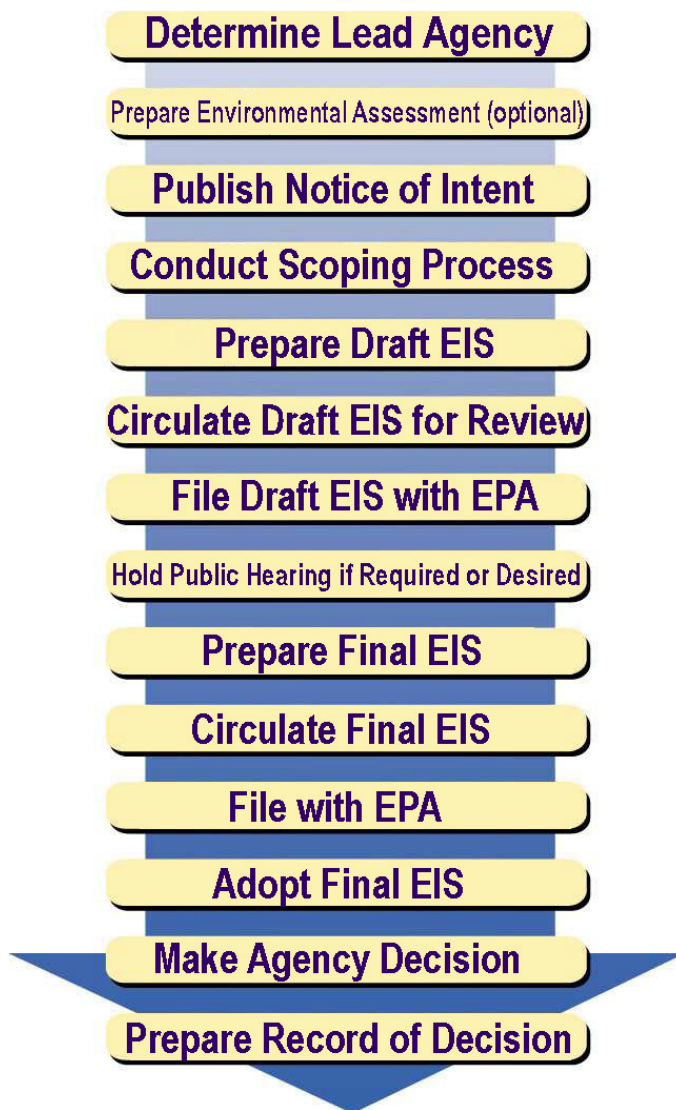
Contents

The FONSI should briefly present reasons why the specific action does not have a significant impact on the quality of the human environment by referencing, not duplicating, the information included in the EA (and the CVPIA PEIS and other programmatic documents) and state that an additional EIS is not required. The FONSI should present all mitigation that has become part of the specific action. The FONSI is not typically distributed for public review unless the federal agency's NEPA regulations require it; public review in these instances is typically 30 days.



Environmental Impact Statement

NEPA compliance for most Restoration Plan actions should not require preparation of an EIS. If required, preparation of an EIS for one Restoration Plan action may include analysis of a broader range of environmental effects to encompass anticipated future actions that are similar to the proposed action or are within the same geographic area or watershed. If the future actions are analyzed in sufficient detail, this EIS could serve as the "project" EIS for specified future actions.



If a specific Restoration Plan action has the potential to significantly affect the quality of the human environment, the Habitat Restoration Project Manager/federal agency needs to prepare an EIS.

USFWS Guidance

The USFWS NEPA Regulations (516 DM 6, Appendix 1) list those particular actions that normally require preparation of an EIS. Actions that meet the criteria in the USFWS NEPA Regulations and that may be relevant to the Restoration Plan are as follows:

- ❖ Major proposals establishing new refuges, fish hatcheries, or major additions to existing installations, which involve substantive conflicts over existing state or local land use or significant controversy over the environmental effects of the proposal (516 DM 6, Appendix 1, 1.6[A][1])
- ❖ Master or comprehensive conservation plans for major new installations, or for established installations, where major new developments or substantial changes in management practices are proposed (516 DM 6, Appendix 1, 1.6[A][2])

Proper noticing for public and agency circulation and review of the draft EIS is required. A final EIS is prepared after comments on the draft document are received, reviewed and responded to.

Restoration Plan Actions

NEPA compliance for most Restoration Plan actions should not require preparation of an EIS. An EIS should not be required if the EA prepared for the Restoration Plan actions tier off a program analysis (e.g., CVPIA PEIS) addressing the cumulative effects of related and reasonably foreseeable future actions and, there are no other significant environmental effects for which mitigation has not been incorporated into the proposed project action.

Assessing CEQA Compliance Needs

Summary of CEQA Compliance Highlights

- ❖ *CEQA documents must include all information required by the CEQA statute and State CEQA Guidelines; in addition, the particular state, regional, or local agency may have specific CEQA guidelines that require a special format for the different CEQA documents, i.e., Categorical Exemptions, Negative Declarations, and/or EIRs.*
- ❖ *All Restoration Plan actions requiring NEPA compliance will most likely also involve state, regional, or local agency discretionary actions considered CEQA “projects” and will therefore, require CEQA compliance.*
- ❖ *Government agencies likely to be lead agencies for Restoration Plan actions include DFG, State Lands Commission (SLC), SWRCB, RWQCB, California Department of Water Resources (DWR), and various involved local agencies.*
- ❖ *A large number of Restoration Plan actions may be capable of achieving CEQA compliance through the use of Categorical Exemptions in those areas where none of the exceptions apply.*
- ❖ *For the majority of Restoration Plan actions for which CEQA compliance cannot be achieved through the use of a Categorical Exemption, CEQA compliance would most likely be completed through the use of a Negative Declaration or mitigated Negative Declaration.*
- ❖ *To facilitate preparation of a mitigated Negative Declaration, rather than preparation of an EIR, mitigation to reduce impacts of a proposed action to a less-than-significant level, as identified in the Programmatic Documents, or through preparation of the Initial Study, should be incorporated into the project description before the Initial Study/mitigated Negative Declaration is made available to the public.*
- ❖ *The CVPIA PEIS should be used in the CEQA process as an equivalent programmatic EIR; CEQA compliance documents for Restoration Plan actions should incorporate the CVPIA PEIS by reference.*
- ❖ *Under some circumstances, projects undertaken by or subject to approval by federal or state agencies other than the CBDP agencies in furtherance of the CBDP long-term plan may tier from the CBDP EIS/EIR. In these cases, it will be important to assure the location and kind of action, impacts (including cumulative effects), mitigation measures, and other commitments are in concert with the CBDP Program, impact documentation and ROD (see CALFED Bay-Delta Program, Guide to Regulatory Compliance for Implementing CALFED Actions, Vol. 1 and 2).*

Introduction

In addition to complying with NEPA, the Habitat Restoration Project Manager must ensure that the Restoration Plan action is in compliance with CEQA. Compliance with CEQA is required for implementation of Restoration Plan actions when:

- ❖ A California state, regional, or local agency approval or other discretionary action is required; or
- ❖ A state or local agency is solely or partially a project sponsor.

CEQA (in a process similar to that required by NEPA) requires state, regional, and local agencies to assess the environmental effects of proposed projects and to circulate these assessments to other agencies and the public for comment before making decisions on the proposed projects. Accordingly, even in a situation where NEPA is not required to be complied with (i.e., no federal agency proposal or permit), the Habitat Restoration Project Manager should be aware that CEQA will most likely apply.

If an action meeting one of the above criteria, was not considered in a previously prepared CEQA document, or does not fall under a Statutory or Categorical Exemption, an Initial Study is prepared to determine whether the project may have a significant environmental effect. If the project would not have the potential for a significant effect or if mitigation incorporated into the project description would reduce the project's effect to a less-than-significant level, a Negative Declaration or Mitigated Negative Declaration is prepared; otherwise, an EIR is prepared. The draft EIR must be circulated for public review. After comments are received and responded to, the final EIR is prepared.

CEQA requires the agency to make findings for all significant impacts identified in the EIR. The agency must adopt all mitigation to reduce environmental effects to a less-than-significant level unless the mitigation is determined to be infeasible. When an action has significant impacts that cannot feasibly be mitigated to a level of less than significant, the agency must adopt a statement of overriding considerations justifying the project's impacts prior to approving the project. The Initial Study (prepared jointly as an EA for NEPA compliance) for the Durham Mutual Water Company Fish Passage Improvement Project is an example of a CEQA document for a single Restoration Plan action (see Appendix B).

CEQA Coordination

In addition to representatives of the appropriate state and local agencies, the following individuals may be contacted by the Habitat Restoration Project Manager for assistance on determining CEQA compliance needs:

- ♦ *AFRP Assistant Program Manager* in the USFWS office at 4001 N. Wilson Way, Stockton, CA 95205-2486, (209) 946-6400
- ♦ Ken Bogdan or Tom Adams at Jones & Stokes Associates, (916) 737-3000

Format Requirements

CEQA documents must include all information required by the CEQA statute and State CEQA Guidelines; in addition, the particular state, regional, or local lead agency may have specific CEQA guidelines that require a special format for the different CEQA documents. Sample formats for various CEQA documents may be found in Appendix B. Unlike NEPA, CEQA lead agencies generally rely more heavily on the State CEQA Guidelines for guidance as opposed to their own regulations; however, the lead agency's specific guidelines, regulations, or rules must be reviewed and followed by the Habitat Restoration Project Manager during the CEQA process.

Public Involvement

Like NEPA, public involvement is an essential feature of CEQA. The CEQA environmental review process provides opportunities for interested citizens to participate in project planning and government decision making. The environmental review process provides ample opportunity for the public to participate through scoping, public notice and public review of CEQA documents, and public hearings, and by requiring agencies to respond to public comments in Final EIRs. The Habitat Restoration Project Manager should work closely with the CEQA lead agency to ensure that issues raised during this process are adequately evaluated and taken into consideration.

Step One: Determine Whether the Action Is Considered a Project under CEQA (Preliminary Review)

All Restoration Plan actions requiring NEPA compliance will most likely also involve state, regional, or local agency discretionary actions considered CEQA "projects" and will therefore, require CEQA compliance.

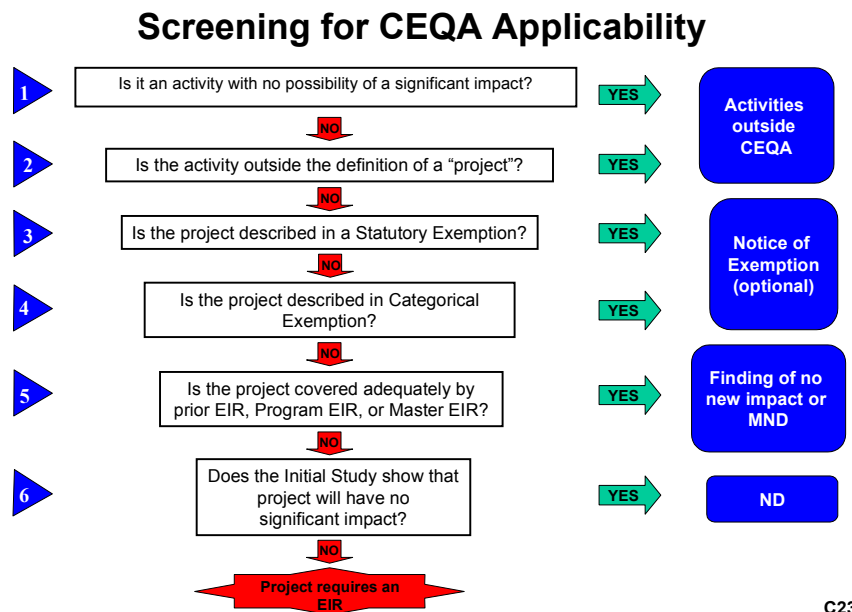
CEQA applies only to state, regional, and local government activities that are considered "projects," as defined by CEQA. CEQA defines a project as the "whole of an action which has the potential for resulting in either a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment." CEQA projects include activities:

- ❖ Directly undertaken by a state or local agency;
- ❖ Supported, in whole or in part, by a state or local agency through contracts, grants, subsidies, loans, or other public assistance; or
- ❖ Involving issuance of a lease, permit, license, certificate, or other entitlement by a state or local agency.

Habitat Restoration Project Managers should be certain to contact the particular state, regional, or local lead agency to confirm CEQA compliance requirements.

Federal agency compliance with certain federal authorizations requires the involvement of state or local agencies, and because the state or local agency would be involved in what is considered a project, requires CEQA compliance. For example, compliance with Section 404 of the Clean Water Act requires

involvement of the California State Water Resources Control Board (SWRCB), through the Regional Water Quality Control Boards (RWQCBs), for compliance with Section 401 of the Clean Water Act. Therefore, although there may be no obvious state, regional, or local agency involvement in a proposed action requiring compliance with Section 404 of the Clean Water Act (either through an Individual Permit or Nationwide or other General Permit), compliance with Section 404 necessitates compliance with Section 401 (see pages 2-52 and 2-61). Therefore, CEQA is triggered based on the fact that a state agency is involved in what is now considered a project under CEQA (i.e., issuance of Section 401 certification).



Determining the Lead Agency

Government agencies likely to be lead agencies for Restoration Plan actions include DFG, the State Lands Commission (SLC), SWRCB, RWQCB, California Department of Water Resources (DWR), and various local agencies.

The CEQA lead agency is typically the state, regional, or local agency with primary responsibility for ensuring compliance with CEQA. If more than one state, regional, or local agency is involved, the lead agency is determined according to:

- ❖ Magnitude of involvement,
- ❖ Approval or disapproval authority over the proposed action,
- ❖ Expertise with regard to environmental effects,

- ❖ Duration of involvement, and
- ❖ Sequence of involvement.

The Habitat Restoration Project Manager, if not directly associated with the CEQA lead agency will need to identify which agency will act as the CEQA lead and then coordinate closely with that agency in preparation of the applicable CEQA document.

Determine the Responsible Agencies

Typically only one state, regional, or local agency is designated the lead agency for CEQA compliance purposes. Other state or local agencies having discretionary authority over some aspect of the project are considered "responsible" agencies (similar to NEPA "cooperating" agencies) (see Chapter 4 for descriptions of relevant permits and permitting processes for state and local agencies). CEQA requires that responsible agencies be involved in the preparation of the CEQA document and rely on the lead agency's CEQA document for subsequent responsible agency approvals.

Categorical and Statutory Exemptions

A large number of Restoration Plan actions may be capable of achieving CEQA compliance through the use of a Categorical Exemption in those areas where none of the exceptions apply.

At the outset, the Habitat Restoration Project Manager should determine whether an action falls within the CEQA list of Statutory or Categorical Exemptions. To streamline the CEQA process, CEQA and the State CEQA Guidelines list Statutory Exemptions and classes of Categorical Exemptions that are exempt from the CEQA process. However, if the project could cause significant environmental impacts or other circumstances apply to the proposed action (e.g., the project area includes endangered species habitat), as defined by CEQA and the State CEQA Guidelines, the Categorical Exemptions may not apply. However, Statutory Exemptions apply regardless of these exceptions.

Restoration Plan actions that may fall under a Statutory or Categorical Exemption include the following:

- ❖ Projects considered "ministerial" and therefore requiring little or no discretion from the CEQA lead agency (such as the issuance of a building permit, grading permits (in some jurisdictions), or signing off on mitigation and reporting compliance). Cal. Pub. Res. Code Section 21080; CEQA Guidelines Sections 15268 and 15300.1.
- ❖ Operation, repair, or maintenance of existing structures or facilities (such as operation of existing fish screening facilities). CEQA Guidelines Section 15301.
- ❖ Replacement or reconstruction of existing structures or facilities (such as updating of fish screen facilities at the same location). CEQA Guidelines Section 15302.
- ❖ Construction or conversion of small new facilities (such as the placement of certain structures for fish habitat improvement that would have minimal adverse environmental effects). CEQA Guidelines Section 15303.

- ❖ Minor alterations of land, water, or vegetation (such as minor riverbank alterations to improve fish habitat). CEQA Guidelines Section 15304.
- ❖ Data collection, research, experimental management, or resource evaluation (such as fish trawling/sampling). CEQA Guidelines Section 15306.
- ❖ Actions by regulatory agencies for protection of natural resources and actions by regulatory agencies for protection of the environment (management of refuge areas for fish and wildlife benefits). CEQA Guidelines Sections 15307 and 15308.

“Unusual Circumstances” Exceptions

Categorical Exemptions represent activities that generally do not result in significant environmental impacts. However, unlike Statutory Exemptions, Categorical Exemptions are not absolute; the State CEQA Guidelines list exceptions to Categorical Exemptions that, if present, negate their use. A Categorical Exemption does not apply if:

- ❖ Unusual circumstances create a reasonable possibility that the activity may have a significant environmental effect (enhancement of fish habitat may affect other species' habitat);
- ❖ Cumulative impacts of the activity, when taken into consideration with reasonably foreseeable projects, would be considered significant (reoperation of water resource facilities combined with other operations have the potential to create a significant cumulative impact);
- ❖ The project occurs in sensitive environments (such as wetlands, endangered species habitat, or official state scenic highways or where historic resources are present); or
- ❖ The project is located at a site included in a list of toxic sites (as maintained by the California Environmental Protection Agency). CEQA Guidelines Section 15300.2.

Although not mandated by CEQA, it is highly recommended that if it is determined that the proposed Restoration Plan action falls under a Categorical Exemption, the Habitat Restoration Project Manager work with the lead agency to prepare a Notice of Exemption. The notice should be filed with the county clerk and State Office of Planning and Research and include a brief description of the project, a finding that the project is exempt, a citation to the particular exemption, and a statement supporting the finding of exemption (see Notice of Exemption/Categorical Exemption checklist in Appendix B).

Step Two: Determine CEQA Equivalent and Tiering Options

If it is determined that a state, regional, or local agency will be involved in a proposed Restoration Plan action and that state or local involvement includes a discretionary action with the potential to affect the environment, and there are no applicable exemptions, CEQA compliance is required (see CEQA “project” above). CEQA compliance for these Restoration Plan actions may be achieved in several ways. Although currently not contemplated as part of the CVPIA PEIS, a program-level CEQA analysis could be prepared to address the entire CVPIA or the Restoration Plan as an entire program (see Determining Appropriate CEQA Compliance Document discussion below); however, site-specific CEQA analysis may be

conducted for each individual action regardless of whether a program-level CEQA analysis is prepared. As of the date of publication, no program-level CEQA analysis has been conducted; however, CBDP prepared a joint CEQA and NEPA document and has incorporated AFRP actions as part of its Ecosystem Restoration Program. The following discussion will relate specifically to how site-specific actions may be able to utilize or tier from existing Programmatic Documents.

Tiering Options

Similar to the Step Two: Tiering Options under Assessing NEPA Compliance Needs, project-specific actions requiring CEQA compliance can utilize the concept of tiering to take advantage of the Programmatic Documents, specifically the CBDP EIS/EIR, for streamlining the required CEQA analysis. Due to the fact that the CBDP EIS/EIR is a joint NEPA/CEQA document, subsequent projects that meet the following requirements may be able to utilize the CBDP EIS/EIR for CEQA compliance. Prior to tiering from the CBDP EIS/EIR, it is necessary to develop a more thorough understanding of the CBDP environmental compliance strategy (see *CALFED Bay-Delta Program, Guide to Regulatory Compliance for Implementing CALFED Actions*, Vol. 1 and 2).

Tiering from CBDP EIS/EIR

Regardless of whether the Programmatic Documents are tiered from or not it is essential that project level CEQA analysis meets the policy commitments described in the CBDP ROD that each project implementing the Bay-Delta Program will be subject to the appropriate type of environmental analysis and will evaluate and use the appropriate programmatic mitigation strategies described in the CBDP EIS/EIR and the ROD.

The CBDP Program is a cooperative effort of eighteen State and federal agencies with regulatory and management responsibilities in the Bay-Delta to develop a long-term plan to restore ecosystem health and improve water management for beneficial uses of the Bay-Delta system. As a result of the CBDP Program being developed subsequent to the CVPIA, AFRP actions have been integrated with the CBDP Ecosystem Restoration Program. Specifically, the CBDP ROD, Attachment 3, Implementation Memorandum of Understanding identifies AFRP actions as a CBDP Category A program. Category A includes programs and funding that should be consistent with the CBDP Program objectives and priorities and submitted to the CBDP Policy Group for review and recommended approval. Accordingly, AFRP projects have been functionally integrated with the CBDP ERP proposal solicitation process to select projects for funding. The AFRP has participated in the project selection process and considered funding program-appropriate projects solicited through the CBDP ERP. The decision as to whether to tier from CBDP or CVPIA programmatic documents for CEQA compliance is a pragmatic decision based on what programmatic document provides the most relevant and useful information. In addition to tiering, it may be appropriate to incorporate by reference either CBDP, CVPIA, or both programmatic documents in certain situations.

In addition to CEQA compliance, Restoration Actions are required to tier from CBDP's endangered species compliance programmatic documents via preparation of an Action Specific Implementation Plan (ASIP) for programmatic compliance with FESA, CESA, and the NCCPA (see p. 2-59 for ASIP discussion). A complete discussion of the CBDP Program and its programmatic mitigation strategies can

be found in the *CALFED Bay-Delta Program, Guide to Regulatory Compliance for Implementing CALFED Actions*, Vol. 1 and 2.

Under some circumstances, projects undertaken by or subject to approval by federal or state agencies other than the CBDP agencies in furtherance of the CBDP long-term plan may tier from the CBDP PEIS/PEIR. In these cases, it will be important to assure the location and kind of action, impacts (including cumulative effects), mitigation measures, and other commitments are in concert with the CBDP Program, impact documentation and ROD (see *CALFED Bay-Delta Program, Guide to Regulatory Compliance for Implementing CALFED Actions*, Vol. 1 and 2).

Use the CVPIA PEIS for Equivalent CEQA Compliance

The CVPIA PEIS can be used in the CEQA process as an equivalent programmatic EIR; CEQA compliance documents for Restoration Plan actions should incorporate the CVPIA PEIS by reference.

In the event that Habitat Restoration Project Manager in consultation with the CEQA lead agency, decided not to tier from the CBDP EIS/EIR, a Restoration Plan action may utilize the CVPIA PEIS to facilitate CEQA compliance. CEQA encourages state and local agencies to use a NEPA document for compliance with CEQA if the NEPA document sufficiently analyzes the state, regional, or local agency's proposed action and the NEPA document meets the procedural and substantive requirements of CEQA. The CVPIA PEIS may be incorporated by reference by a CEQA lead agency for purposes of complying with CEQA if it contains the necessary information. The following steps should be utilized by the Habitat Restoration Project Manager, with the lead agency's approval, for determining whether a proposed action is analyzed to a sufficient level of detail to meet the CEQA requirements (see the section "Step Two: Tiering Options" under "Assessing NEPA Compliance Needs" on page 2-19):

- ❖ Assess whether the action is within the CVPIA PEIS study area,
- ❖ Assess whether the action is within the scope of the CVPIA PEIS impact analysis, and
- ❖ Prepare a written determination.

The Habitat Restoration Project Manager/CEQA lead agency may use the CVPIA PEIS without recirculation if the PEIS was determined to have been circulated as broadly as required by CEQA and if the CEQA lead agency issues notice regarding the applicability of the PEIS and its intent to use the PEIS for CEQA compliance.

Step Three: Determine the Appropriate CEQA Document

Conduct a Program-Level Analysis

Recommendations made for additional NEPA program documents apply to CEQA as well. In addition, any environmental document prepared to satisfy NEPA at the program level or project level should be prepared as a joint document to satisfy CEQA as well.

Although not done to date, the Habitat Restoration Project Manager and CEQA lead agency may determine that it is necessary for CEQA compliance to prepare a separate program environmental analysis on the CVPIA. This would require proper noticing and public and agency review through preparation of a draft and final program EIR. A more realistic scenario may involve CEQA compliance through preparation of a program EIR for the Restoration Plan that analyzes the Restoration Plan in its entirety or analyzes the Restoration Plan as broken down by geographic area (or by watershed) or by action category. To date, such program-level analysis has not been undertaken.

If a Restoration Plan program EIS has already been prepared in addition to the overall CVPIA PEIS, the Habitat Restoration Project Manager/CEQA lead agency may use this document without further CEQA circulation by incorporating it by reference. The same questions regarding whether the program EIS sufficiently analyzed the proposed action for purposes of complying with CEQA would apply (see above discussion). In addition, it may be possible to utilize the CBDP EIS/EIR as a first-tier CEQA document for projects that are consistent with the CBDP study area and impact analysis (see above discussion). If in fact an additional program EIS is prepared, USFWS may identify an appropriate state or local lead agency to share in document preparation responsibilities and a joint NEPA/CEQA program EIS/EIR may be prepared. In preparing a joint programmatic EIS/EIR, the Habitat Restoration Project Manager and CEQA lead agencies should note the differences between NEPA and CEQA (see "Prepare Joint NEPA/CEQA Documents When Appropriate" on page 2-49 and Appendix A).

Conduct a Project-Level Analysis

Most actions should achieve CEQA compliance through the use of a Categorical Exemption; the remaining actions should achieve CEQA compliance through completion of an Initial Study supporting a Negative Declaration or a mitigated Negative Declaration.

Implementation of most actions will require project-level CEQA compliance; the CEQA document for the project-specific action should incorporate by reference as much information as possible from the CVPIA PEIS (and any other programmatic EIS or EIR). Tiering from a program-level analysis should facilitate CEQA compliance for the specific action (i.e., facilitate preparation of an Initial Study/mitigated Negative Declaration rather than an EIR because mitigation for significant impacts, including cumulative impacts, has already been established) If the CVPIA PEIS or other program EIS or EIR recommends programmatic mitigation to avoid environmental impacts, these measures should be adopted as part of the proposed action to facilitate CEQA compliance.

CEQA compliance for the specific Restoration Plan actions could be in the form of a Statutory or Categorical Exemption, an Initial Study, a Negative Declaration or mitigated Negative Declaration, or an EIR.

Initial Study

In cases in which no Statutory or Categorical Exemption is appropriate, the Habitat Restoration Project Manager, in conjunction with the CEQA lead agency should prepare an Initial Study (unless the proposed action normally requires preparation of an EIR). The purpose of the Initial Study is to determine whether the specific Restoration Plan action has the potential to cause significant environmental effects. The Initial Study can be combined as a joint document with the EA being prepared for NEPA compliance.

Required Contents of an Initial Study

- ✓ Project description
- ✓ Environmental setting
- ✓ Potential environmental impacts
- ✓ Mitigation measures for any significant effect
- ✓ Consistency with plans and policies
- ✓ Names of preparers

In preparing the joint EA/Initial Study, the Habitat Restoration Project Manager and CEQA lead agencies should note the differences between NEPA and CEQA (see below and Appendix A). Whereas NEPA requires the EA to discuss alternatives, such discussion is not required for an Initial Study.

Mitigation in an Initial Study. *To facilitate preparation of a mitigated Negative Declaration, rather than preparation of an EIR, mitigation to reduce impacts of a proposed action to a less-than-significant level, as identified in the CVPIA PEIS, in any other programmatic EIS or EIR, or through preparation of the Initial Study, should be incorporated into the project description before the Initial Study is issued to the public.*

Content. The Initial Study should briefly discuss the specific action; environmental setting; discuss environmental impacts of the action; discuss ways to mitigate impacts; discuss whether consistent with existing plans or land use controls; list agencies, interest groups, and members of the public consulted; and provide supporting technical data or appendices, including references to the CVPIA PEIS or any other programmatic EIS or EIR from which the analysis is tiered.

Initial Study Conclusions. Based on the results of the Initial Study (and using the information from the CVPIA PEIS, other program EIS or EIR, or other NEPA or CEQA documents prepared for similar actions within the same area), the Habitat Restoration Project Manager in conjunction with the CEQA lead agency may determine whether it is necessary to prepare an EIR for implementing the proposed action. If it is not necessary to prepare an EIR (i.e., if a fair argument cannot be made that, based on substantial evidence on the record, the proposed action has the potential for creating significant environmental impacts), the Habitat Restoration Project Manager/CEQA lead agency prepares a Negative Declaration or mitigated Negative Declaration.

Mandatory Findings of Significance. CEQA establishes certain mandatory findings of significance (Cal. Pub. Res. Code Section 21083; CEQA Guidelines Section 1506). According to CEQA, a project would have a significant effect on the environment and therefore, require the preparation of an EIR if the project would result in any of the following:

- ✓ The project has the potential to substantially degrade the quality of the environment, substantially reduce the habitat of fish or wildlife species, cause a fish or wildlife population to drop below the self-sustaining levels, threaten to eliminate a plant or animal community, reduce the number or restrict the range of an endangered, rare or threatened species, or eliminate important examples of the major periods of California history or prehistory.
- ✓ The project has the potential to achieve the short-term environmental goals to the disadvantage of long-term environmental goals.
- ✓ The project has possible environmental effects which are individually limited but cumulatively considerable. "Cumulatively considerable" means that the incremental effects of an individual project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of reasonably foreseeable future projects.
- ✓ The environmental effects of a project will cause substantial adverse effects on human beings, either directly or indirectly.

Negative Declaration or Mitigated Negative Declaration

For the majority of Restoration Plan actions for which CEQA compliance cannot be achieved through the use of a Categorical Exemption, CEQA compliance would most likely be completed through the use of a Negative Declaration or mitigated Negative Declaration. In preparing the joint FONSI/Negative Declaration, the Habitat Restoration Project Manager and CEQA lead agencies should note the differences between NEPA and CEQA. The CEQA trigger for determining the potential for significant impacts and, therefore, requiring preparation of an EIR, is more strict than the NEPA trigger for an EIS.

If no potential for significant environmental effects exists or if mitigation has been incorporated to reduce potential impacts of the specific Restoration Plan action to a less-than-significant level (no substantial evidence of a fair argument that the project may have a significant effect on the environment), a Negative Declaration or mitigated Negative Declaration may be prepared.

Contents. The negative declaration should briefly present reasons why the specific Restoration Plan action does not have the potential for significant environmental impact by referencing, not duplicating, the information included in the Initial Study (and the CVPIA PEIS and any other programmatic document) and state that an EIR is not required. The Negative Declaration should present all mitigation that has become part of the specific action. A draft of the Negative Declaration is distributed for public and agency review for 20-30 days. The required contents of an Negative Declaration or Mitigated Negative Declaration include: project description; project location; identification of project proponent; proposed finding of no significant effect; attached copy of the Initial Study justifying the finding; and any mitigation measures included in the project description to avoid significant effects.

The Negative Declaration can be combined as a joint document with the FONSI being prepared for NEPA compliance. However, the CEQA trigger for determining the potential for significant impacts and, therefore, requiring preparation of an EIR, is stricter than the NEPA trigger for an EIS. If a "fair argument" can be made that there is potential for a significant impact, CEQA requires preparation of an EIR, even if there is substantial evidence to support the conclusion that there would be no significant impact. NEPA, on the other hand, would not require preparation of an EIS if substantial evidence existed

to support the conclusion that there would be no significant impact, regardless of the existence of evidence to the contrary. This can result in a situation where CEQA requires an EIR and NEPA requires an EA/FONSI, for the same project.

Environmental Impact Report

In preparing the joint EIS/EIR, the Habitat Restoration Project Managers and CEQA lead agencies should note the differences between NEPA and CEQA. Under NEPA, the EIS is required to analyze alternatives at relatively the same level of detail, while CEQA requires a comparison of the alternatives in the EIR but does not require evaluation of the alternatives at the same level of detail as evaluation of the proposed action.

If the specific Restoration Plan action has the potential to cause a significant effect on the environment and preparation of a Negative Declaration is not appropriate, the Habitat Restoration Project Manager/CEQA lead agency needs to prepare an EIR. The proper noticing for public and agency circulation and review of the EIR is required. The EIR should incorporate by reference the relevant information contained in the CVPIA PEIS, other programmatic documentation, and other NEPA and CEQA documents (such as information contained in EAs, Initial Studies, and EISs or EIRs prepared for other proposed Restoration Plan actions). A final EIR is prepared after comments on the draft document are received and reviewed. The final EIR is required to include the Draft EIR, or revised version, copies or summaries of comments received during public review, names of commenting entities, responses to comments, and any other information added by the Lead Agency.

Just as with the EIS, preparation of an EIR for one action may include analysis of a broader range of environmental effects to encompass anticipated future Restoration Plan actions that are similar to the proposed action or are within the same geographic area or watershed. If the future actions are analyzed in sufficient detail, this EIR could serve as the "program" or even "project" EIR for these future actions.

The EIR can be combined as a joint document with the EIS being prepared for NEPA compliance. It should be noted that an important distinction is that unlike NEPA, CEQA requires the lead agency to adopt all feasible mitigation to reduce significant environmental effects to a less-than-significant level.

Phase 3: The EIR Process under CEQA

Environmental Impact Report	Time Limitation
Notice of Preparation sent to responsible and trustee agencies	
Responses to Notice of Preparation sent to Lead Agency	30 days from acceptance
Contract for EIR preparation executed	45 days from decision to prepare EIR
Preliminary Draft EIR prepared	
Independent review by Lead Agency	
Draft EIR completed and submitted for review	
Notice of Completion filed	
Public notice and review of Draft EIR	30- or 45-day minimum
Public hearing on Draft EIR (optional)	
Written comments received	
Responses to comments prepared	
Responses sent to commenting agencies (Public Resources Code sec. 21092.5)	10 days before decision
Final EIR certified by Lead Agency (CEQA Guidelines Code sec. 15108)	1 year from acceptance
Lead Agency makes decision on project (Gov. Code sec. 6590)	6 mo. from Final EIR certification
Findings written and adopted	
Mitigation reporting and monitoring program adopted	
Notice of Determination filed (Gov. Code sec. 15094)	5 days from approval

Environmental Impact Report	Time Limitation
Notice of Determination posted (Gov. Code sec. 15094)	24 hours from filing
Responsible Agency makes decision on project (Gov. Code sec. 65950)	180 days from lead agency decision

CEQA Guidelines secs. 15105 and 15107

Prepare Joint NEPA/CEQA Documents When Appropriate

When federal and state or local agencies are involved in the same project, both NEPA and CEQA encourage preparation of a joint document, such as the programmatic EIR/EIS. A joint document must meet the public review and notice requirements of both acts.

In practice, there are several recommendations that may facilitate state and local agency interaction with federal lead agencies when joint CEQA/NEPA documents are being prepared. First, a written memorandum of understanding (MOU) between the two lead agencies, coordinated by the Habitat Restoration Project Manager, should define the roles and responsibilities of each agency, expected schedule, other expectations regarding the preparation of the environmental document (including assumptions regarding impact analysis), and dispute resolution procedures. Second, because NEPA and CEQA are somewhat different with regard to procedural and content requirements, the agencies should agree at the outset to apply whichever requirements are more stringent. Third, the scope and content of the EIR/EIS, and the respective responsibilities for reviewing interim drafts, should be clearly defined (see also Appendix A).

Practical Recommendations to Facilitate and Streamline Environmental Compliance and Project Permitting

After assessing the method of compliance for NEPA and CEQA and conducting a preliminary constraints analysis, the Habitat Restoration Project Manager should prepare an environmental compliance strategy to identify relevant environmental laws and regulations, in addition to NEPA and CEQA, that require compliance.

The following sections present practical recommendations to facilitate and streamline environmental compliance and permitting for Restoration Plan actions for certain key permitting processes. See Chapter 4 for a complete description of all environmental permitting processes that may apply to Restoration Plan actions.

Priorities for Environmental Review and Permitting

Through development of the environmental compliance strategy, the Habitat Restoration Project Manager should be better able to identify which of the environmental review processes needs to be started first. The Habitat Restoration Project Manager should integrate as many related activities as possible into a single action or set of actions that can be incorporated into one permit application; this will streamline permitting in cases where the Habitat Restoration Project Manager needs to comply with only one agency's requirements to achieve compliance with other environmental regulations or permit requirements.

As identified above, complying with NEPA and CEQA, generally requires the greatest amount of time. One reason for this is that NEPA and CEQA compliance is broad in nature and as a result encompasses/utilizes information gathered pursuant to other environmental review and permitting processes (e.g., wetlands and endangered species survey information). Although the following environmental review and permitting processes are presented in the order of recommended compliance, depending on the particular issues involved, one process may take longer than another.

Common Problems that Can Cause Integration to Fail

General

A completely integrated process is sometimes difficult to achieve. Even the best intended efforts at integration may encounter roadblocks. The following are some of the most common problems that the Habitat Restoration Project Manager may face in their integration efforts. Whenever possible, the Habitat Restoration Project Manager should anticipate these problems so as to avoid them or develop alternative solutions.

Lack of a comprehensive environmental compliance strategy

Probably the most frequent reason that integration fails is the absence of an organized and complete comprehensive environmental compliance strategy. Too often, attempts at integration are left to the last minute when coordination and cooperation are impossible to achieve. For many proposed actions, the integration of NEPA/CEQA with other requirements is too complicated to be left to chance. Without developing a comprehensive approach and assigning specific responsibilities for implementation in a timely manner, delay and duplication are likely to occur.

Ignorance of Requirements

If the Habitat Restoration Project Manager does not take the time to learn about the regulatory requirements of other agencies, full integration is likely to fail. For instance, one of NEPA's objectives is to require federal agencies to take an interdisciplinary approach to evaluating effects. If a lead agency/Habitat Restoration Project Manager fails to include one key agency in its NEPA/CEQA process, the entire process may be delayed. It should be noted that learning about other agencies' laws and regulations may require additional time and training. Therefore, agencies/Habitat Restoration Project Managers may need to involve their resource experts and, possibly, legal staff in the NEPA/CEQA process at an early stage to assist in developing strategies and potential pitfalls.

Inadequate Consultation

The failure of the Habitat Restoration Project Manager/lead agency to consult with other involved agencies at an early stage of the NEPA/CEQA process can also adversely affect integration efforts. Early and frequent communication is essential to successful integration. To maximize the effectiveness of integration, the Habitat Restoration Project Manager/lead agency should consult with other agencies at each key step in its integration work plan.

Timing Conflicts

Another potential cause of integration failure is the poor allotment of time for completion of the NEPA/CEQA process and other environmental review processes. Sometimes Habitat Restoration Project Managers/lead agencies develop schedules for completing the process without determining how long related regulatory reviews, studies, or consultations may take. In other cases, Habitat Restoration Project Managers/lead agencies may develop unreasonably short schedules in response to the demands of schedule and budget concerns or agency officials. These types of situations can cause timing delays and duplication of effort that defeat the objectives of NEPA/CEQA integration.

Non-cooperation

A negative, non-cooperative attitude by agency officials or staff can also cause integration to fail. Sometimes, such attitudes are the result of past or present "turf battles" between federal/state agencies that are competing for control of the NEPA/CEQA process or the lead role in regulating a particular resource. In other cases, these non-cooperative attitudes are specific to individuals. A flexible and positive attitude is essential to achieving the successful integration of NEPA/CEQA with other laws.

Clean Water Act, Section 404

Section 404 of the Clean Water Act restricts the discharge of dredged or fill material into "waters of the United States," including wetlands, without a permit from the U.S. Army Corps of Engineers (Corps). The following discussion presents practical recommendations for complying with Section 404 of the Clean Water Act. Please see Chapter 4 for a complete discussion of the requirements of Section 404 and the Corps' permitting process.

Early Consultation

The Habitat Restoration Project Manager should assess whether the Restoration Plan actions are:

- ❖ Located in "waters of the United States," including wetlands, and
- ❖ Considered a "discharge" of dredged or fill material (see discussion in Chapter 4 of court restriction of application of the "excavation rule").

See Chapter 4 for the definitions of "waters of the United States" and "discharge" activities.

Goals for Early Consultation

Starting the Section 404 process early addresses two different needs. Section 404 and the U.S. Environmental Protection Agency's (EPA's) Section 404(b)(1) Guidelines direct that avoidance should be the first approach in addressing potential wetland impacts. If wetlands on the project site are identified early enough in the project design stage, time and money will be saved by ensuring that the greatest amount of wetlands are avoided. The Corps and EPA will require documentation of avoidance of wetlands during the individual permitting process. Also, starting the Section 404 process early allows for project design to incorporate mitigation measures or design features to avoid wetland impacts where practicable. After the project has reached a sufficient level of detail to determine impacts on the wetlands, the Habitat Restoration Project Manager should contact the Corps to determine the appropriate permit process for achieving compliance with Section 404, in addition to any other concerns that the Corps and other resource agencies may have.

Pre-application Meeting

The Habitat Restoration Project Manager should plan to attend a pre-application meeting that is hosted, at least quarterly, by the Corps. These meetings are regularly held to review a permit applicant's preliminary project purpose, concept, plans, designs, and documentation for consistency with the Corps' permit process and to provide guidance and advice to assist applicants in complying with the technical and procedural requirements. This informal meeting is an excellent opportunity for the Habitat Restoration Project Manager to coordinate with key Corps staff and representatives of other concerned agencies (e.g., EPA, USFWS, NOAA Fisheries, and DFG) to identify problems, needs, and issues requiring consideration. In addition, these meetings offer an opportunity to develop options or strategies for streamlining the process. The Corps may assist the Habitat Restoration Project Manager in determining the type of permit required under Section 404 (i.e., Individual Permit, General Permit, or Letter of Permission).

Type of Permit Required

It is highly recommended that the Habitat Restoration Project Manager make every attempt to fit the Restoration Plan action under a Nationwide Permit or an existing Regional General Permit.

After it is determined that the Restoration Plan action will need to comply with Section 404 of the Clean Water Act, the Habitat Restoration Project Manager should determine, with assistance from the Corps, which type of permit is necessary.

The most efficient process for complying with Section 404 (least time consuming and requiring the least paperwork) would be to receive authorization through either a General Permit or a Letter of Permission. Section 404 authorizes the Corps to issue General Permits on a nationwide, regional, or local basis. General Permits are issued for similar actions with minimal environmental effects. Letters of Permission are issued by the Corps through an abbreviated process for individual actions, not fitting under a General Permit, that also have minimal adverse environmental effects.

Typically, these types of authorizations require very little paperwork and only require submittal of a pre-construction notification that indicates compliance with the conditions of the General Permit or Letter of Permission. Even if notification to the Corps is not specifically required with use of a particular General Permit or Letter of Permission, it is recommended that the Habitat Restoration Project Manager notify the Corps to document that all the conditions of the General Permit or Letter of Permission have been met for all actions that are located in waters of the United States, including wetlands (see discussion in Chapter 4), that involve a discharge of dredged or fill material.

General Permits. A General Permit may be available for the proposed action through the Corps' existing Nationwide Permit program (reissued on March 18, 2002) or an existing Regional Permit.

Nationwide Permits. Under Nationwide Permits, once the published conditions of the permit are met, the project can move forward; no "permit" is actually issued to the Habitat Restoration Project Manager (although a Letter of Permission may be issued by the Corps stating that a particular Nationwide Permit is applicable to the proposed action). Regardless, it is recommended that the Habitat Restoration Project Manager contact the Corps to ensure that all conditions of the Permit (including Regional NWP Conditions) have been met prior to beginning work.

The Nationwide Permits most likely to be applicable to Restoration Plan actions are:

- ❖ *Nationwide Permit 4. Fish and Wildlife Harvesting, Enhancement, and Attraction Devices and Activities.* This permit applies to harvesting devices and activities, such as pound nets and duck blinds, and fish attraction devices, such as open water fish concentrators. Installation of fish screens under a certain size may also be covered by this permit.
- ❖ *Nationwide Permit 13. Bank Stabilization.* This permit applies to bank stabilization activities necessary for erosion prevention. The activity must not exceed an average of one cubic yard per running foot placed along the bank below the ordinary high-water mark or the high tide line and cannot be located in a special aquatic site, including wetlands. The activity is also restricted from impairing surface water flow into or out of any wetland area.

- ❖ *Nationwide Permit 14. Road Crossings.* This permit applies to fill activities associated with roads, including temporary access roads for construction, crossing waters of the United States. The fill is limited to an area of no more than 1/2 acre.
- ❖ *Nationwide Permit 18. Minor Discharges.* This permit applies to activities considered minor in which the quantity of discharged material and the volume of excavated area does not exceed 25 cubic yards below the ordinary high-water mark or high tide line. The activity must not cause the loss of more than 1/10 acre of a special aquatic site, including wetlands.
- ❖ *Nationwide Permit 19. Minor Dredging.* This permit applies to dredging activities of no more than 25 cubic yards below the ordinary high-water mark or mean high-water mark.
- ❖ *Nationwide Permit 27. Stream and Wetland Restoration Activities.* Activities in waters of the U.S. associated with the restoration of former waters, the enhancement of degraded tidal and non-tidal wetlands and riparian areas, the creation of tidal and non-tidal wetlands and riparian areas, the creation of tidal and non-tidal wetlands and riparian areas, and the restoration and enhancement of non-tidal streams and non-tidal open water areas on non-federal public lands, private lands, reclaimed surface coal mine lands, and any other public, private, or tribal lands.

Regional Permits. The Habitat Restoration Project Manager should check with the regulatory branch of the applicable Corps district (most likely the Sacramento District) for existing Regional Permits that may apply. If a Regional Permit has not already been published, the Habitat Restoration Project Manager should investigate the possibility of having one developed for similar actions within the area.

Individual Permits. The Individual Permit process is the most time-consuming and costly process for achieving compliance with Section 404. The Individual Permit process requires public notice; provision for opportunity for public and agency comment, potentially a public meeting for hearing comments; and submittal of responses to comments, formal application, and other documentation of compliance, including an alternatives analysis in compliance with EPA's Section 404(b)(1) Guidelines.

Corps Compliance with Other Laws

With any type of authority to proceed under Section 404 of the Clean Water Act, the Habitat Restoration Project Manager must assist the Corps in ensuring compliance with other environmental laws necessary for the Corps' action, even if the project is otherwise authorized under a General Permit (including Nationwide and Regional permits). The Corps' conditions on all authorizations under Section 404 require compliance with Section 7 of the ESA, Section 401 of the Clean Water Act, and Section 106 of the National Historic Preservation Act (NHPA). It should be noted that for the issuance of General Permits, the Corps complies with NEPA when the General Permit is first issued; when the Corps is notified that a particular action meets the conditions of a General Permit, no additional NEPA compliance is required for the Corps; however, compliance is required for the above listed laws (discussed further below).

For compliance with Section 7 of the ESA (see Chapter 4), the Habitat Restoration Project Manager should anticipate the consultation needs of the endangered species staff of USFWS and NOAA Fisheries. Preparation of a biological assessment and receipt of a Biological Opinion may be required. For compliance with Section 401 of the Clean Water Act (see Chapter 4), the Habitat Restoration Project Manager should determine RWQCB needs to facilitate that process. For compliance with Section 106 of the NHPA (see Chapter 4), the Habitat Restoration Project Manager should anticipate the survey needs

for assessing the effect of the action on properties listed and eligible for listing on the National Register of Historic Places (NRHP).

When the Corps requires an Individual Permit, the Corps' strategy for compliance with NEPA, is to first determine whether actions by other federal agencies are necessary. The reason for this is that the Corps typically does not assume the role of lead agency for permit actions unless no other federal agencies are involved. Even when it is the lead agency, the Corps typically seeks to avoid preparing an EIS if possible.

To facilitate NEPA compliance, the Corps may require the Habitat Restoration Project Manager to first complete all other environmental reviews required by other laws, such as CEQA, and furnish the Corps with all relevant information regarding the potential environmental effects of the proposed action. If the CEQA analysis provides for mitigation that reduces all environmental effects to a less-than-significant level, the Corps may be able to prepare an EA supporting a FONSI, rather than preparing an EIS (even though an EIR may have been prepared for CEQA compliance).

Alternatives Analysis Requirements for Individual Permits

If it is determined that an Individual Permit is required, the Habitat Restoration Project Manager should begin incorporating the Corps' requirements into project planning as early as possible. EPA's Section 404(b)(1) Guidelines require that the Corps assess whether there are practicable alternatives (based on cost, feasibility/technology, and logistics) available to the project applicant that would have less of an effect on waters of the United States and that would not have other detrimental environmental effects. The Habitat Restoration Project Manager should take this requirement into consideration when planning both project site location and onsite project design.

The alternatives analysis for the Restoration Plan action should tier off the CVPIA PEIS and any other environmental documents that have already been prepared to provide information on the availability of practicable offsite alternatives. The alternatives analysis should be consistent with the alternatives analyzed in the project-level NEPA process and, if applicable, CEQA documents; however, the NEPA alternatives analysis may not be of sufficient breadth to document compliance with EPA's guidelines.

It should be noted that the EPA guidelines presume that there are practicable alternatives available when the proposed action is not dependent on being located in "special aquatic sites."

Special aquatic sites include wetlands, mud flats, vegetated shallows, and riffle and pool complexes. Because most, if not all, of the Restoration Plan actions are dependent on being located in a special aquatic site (e.g., gravel placement for fish spawning habitat must necessarily be located within a stream), USFWS will have much less of a burden to provide information to the Corps for ensuring that an action is the least environmentally damaging practicable alternative.

Mitigation Sequencing Requirements

The Corps typically has a stricter requirement for mitigation of wetland impacts than NEPA and CEQA. Under NEPA and CEQA, the lead agency may determine that the effect on the wetlands (e.g., because of the quality of the wetland) either is less than significant or, with mitigation or compensation elsewhere, is reduced to a less-than-significant level. However, mitigation that satisfies NEPA and CEQA may not be

enough to satisfy the Corps sequencing and alternatives analysis requirements. Accordingly, Corps mitigation should be utilized in the CEQA and NEPA documents to ensure consistency.

The Corps will require the Habitat Restoration Project Manager to document that the project planning has gone through the proper order of sequencing when mitigation for wetlands impacts is assessed. The Corps requires that avoidance be the first step in determining wetlands mitigation. When wetlands cannot be avoided, the project effects on the wetlands must be minimized (mitigation designed to limit impacts to wetlands) to the greatest extent possible. It is only after it is shown that the wetlands have been avoided and the effects minimized that the Corps allows mitigation in the form of compensation.

The generally accepted order of allowable compensation is as follows: on-site and in-kind wetland compensation to the function and value of the affected wetland; off-site and in-kind wetland compensation (especially if it is part of an approved mitigation bank); on-site and out-of-kind wetland compensation. The above represents the general hierarchy for compensatory mitigation; however, existing guidance provides flexibility by allowing the use off-site mitigation where it is determined to be practicable and environmentally preferable to on-site mitigation. Further, out-of-kind mitigation is also allowed in circumstances where it is environmentally desirable, in the context of consolidated mitigation. Additional guidance on compensatory mitigation is expected to be available by the end of 2003.

CBDP's Section 404 Programmatic Memorandum of Understanding (MOU)

If it is determined that the Restoration Plan action is under the scope of the CBDP EIS/EIR and carried out or funded by CBDP Agencies as part of the CBDP Program, the CBDP Section 404 Programmatic MOU applies. The Programmatic Record of Decision (ROD) for the CBDP EIS/EIR includes a CWA Section 404 MOU signed by the U.S. Bureau of Reclamation, EPA, USACE, and DWR. Under the terms of the MOU, when a project proponent applies for a Section 404 individual permit for CBDP projects, the proponent is not required to re-examine program alternatives already analyzed in the PEIS/EIR. For a complete discussion of the MOU see the "*CALFED Bay-Delta Program, Guide to Regulatory Compliance for Implementing CALFED Actions*, Vol. 1 and 2."

Endangered Species Act, Section 7

Section 7 of the ESA requires that all federal agencies consult with USFWS and NOAA Fisheries, to ensure that their actions do not jeopardize the continued existence of a species listed under the ESA. The following discussion presents practical recommendations for complying with Section 7 of the ESA. Please see Chapter 4 for a complete discussion of the requirements of Section 7 and the USFWS and NOAA Fisheries consultation process.

Consultation

It is most likely that either the Habitat Restoration Project Manager for the Restoration Plan actions will be a federal agency or that the actions will at least require federal agency discretionary involvement, triggering the need for compliance with Section 7. If a nonfederal agency is proposing the project, a federal agency may still be involved in issuing a permit or funding, which would still trigger the need for Section 7 consultation (e.g. Corps Section 404 permit) based on the applicable federal agency's involvement. The trigger for requiring consultation under Section 7 is equivalent to NEPA's trigger.

Internal Consultation

USFWS has the same responsibility under Section 7 as any other federal agency. Therefore, even if USFWS is proposing the action, internal consultation with the Endangered Species Office of USFWS, and possible consultation with NOAA Fisheries, is required. Internal consultation is also required if the Habitat Restoration Project Manager is a nonfederal agency and no federal permits are required and there is a need to obtain an incidental take permit pursuant to Section 10 of the ESA; issuance of the incidental take permit from USFWS will trigger USFWS' need to perform an internal consultation with the USFWS Endangered Species Office and possible consultation with NOAA Fisheries.

Informal Consultation Regarding Take of a Listed Species

The Habitat Restoration Project Manager may wish to informally contact USFWS to determine methods to avoid take of a listed species. Based on the Ninth Circuit court case, Marbled Murrelet v. Babbitt, USFWS' provision of advice to either federal or nonfederal entities on methods to avoid take of a listed species pursuant to its Section 9 enforcement powers is not considered a "federal agency action." Therefore, this type of informal consultation does not trigger Section 7 consultation requirements.

Conferencing for Species Proposed for Listing under the Endangered Species Act

In addition to listed species, a federal agency is also required to assess an action's effect on a species proposed for listing. Under Section 7, the species proposed for listing is handled in a process separate from formal consultation. The process for addressing species proposed for listing is called "conferencing" and is carried out in a way that is similar to the consultation process for species listed as threatened or endangered. Due to the fact that it is possible that the species may become listed during the life of the proposed project, it is important to reduce any adverse effects.

USFWS and NOAA Fisheries opinions issued at the conclusion of the conference may be adopted as the Biological Opinions when the species is actually listed as threatened or endangered, but only if no significant new information is developed and no significant changes in the federal action are proposed.

Candidate Species

There is no requirement for formal consultation or taking part in a conference on the effects of the agency's actions on candidate species under Section 7 of the ESA. However, because these species may become listed as threatened or endangered sometime in the life of the proposed action, the effects on these species and the mitigation to reduce the severity of these effects should be considered during the Section 7, consultation process.

It should be noted that NEPA, and CEQA if applicable, do not necessarily distinguish between the effects of the proposed action on listed species versus candidate species. Therefore, the lead agency may include in the NEPA (and CEQA) document the discussion of the effects on and mitigation for those effects on candidate species at the same level of detail as the effects on species proposed for or listed as threatened or endangered.

Impact Assessment for Listed Species

Species are listed under the ESA because they are either in danger of becoming extinct or they are likely to become endangered in the foreseeable future (threatened). Therefore, these listed species, are in a

situation in which minor effects may be detrimental to their existence. The Habitat Restoration Project Manager should ensure that the impact assessments for these species take this into account when determining significance in the NEPA and CEQA process and when determining appropriate mitigation. Also, when assessing cumulative effects on a listed species, the Habitat Restoration Project Manager should closely scrutinize the effects of the proposed project in combination with past, present, and reasonably foreseeable future projects to determine the significance of the cumulative effect and the appropriate mitigation.

Mitigation Requirements and Planning

Not unlike Section 404, USFWS and NOAA Fisheries typically have stricter requirements for mitigation for listed species than NEPA and CEQA. Under NEPA and CEQA, the lead agency may determine that the effect on the listed species is either less than significant or, with mitigation or compensation elsewhere, is reduced to a less-than-significant level. However, mitigation that satisfies NEPA and CEQA may not be enough to satisfy USFWS and NOAA Fisheries. As stated below, either being directly involved in formal mitigation planning for listed species in the area or "tiering" off these types of mitigation plans may be necessary to meet ESA mitigation requirements (See discussion of CBDP and ASIPs on page 4-91 of Chapter 4 regarding tiering opportunities).

The focus on mitigation planning for species listed under the ESA has broadened to incorporate multiple actions within a habitat area for multispecies mitigation. These mitigation plans fall under the categories of required mitigation as part of:

- ❖ A Biological Opinion through consultation with USFWS and NOAA Fisheries under Section 7 of the ESA;
- ❖ A Habitat Conservation Plan (HCP) as part of the issuance of an incidental take permit under Section 10 of the ESA; or
- ❖ A mitigation plan (e.g., natural communities conservation plan [NCCP]) through development by DFG through a state program (see discussion of CESA below).

These planning efforts should necessarily incorporate a range of projects and species needs that is wider than the focus on an individual species for each separate project. The Habitat Restoration Project Manager should determine whether these types of mitigation planning efforts have been performed or are currently ongoing when deciding on the appropriate mitigation for listed species effects. "Tiering" off these types of planning efforts may provide a mechanism to streamline the ESA process (see discussion of CBDP and ASIPs on page 4-91 of Chapter 4 regarding tiering opportunities).

Tiering from CBDP Programmatic Documents/Multi-Species Conservation Strategy and Action Specific Implementation Plans

Many Restoration Plan actions may qualify as CBDP projects or actions and therefore, trigger the requirement to tier from certain CBDP programmatic documents (see discussion of CBDP Tiering on p. 2-22). One such programmatic document is the "Multispecies Conservation Strategy," dated July 2000, a technical appendix to the CBDP EIS/EIR. As part of the USFWS and NOAA Fisheries' Programmatic

Biological Opinions for CBDP, the MSCS was developed to ensure compliance with FESA, CESA, and the NCCPA. The MSCS is a comprehensive programmatic strategy for the conservation of numerous species of fish, wildlife and plants and their habitat based on key CBDP program elements. These program elements include the CBDP Ecosystem Restoration Program and the Environmental Water Account. Implementation of the MSCS is intended to ensure that entities implementing CBDP actions will satisfy the requirements of FESA, CESA, and the NCCPA.

In order to comply with the MSCS, the USFWS (defined as a CBDP “Party”) must prepare an Action Specific Implementation Plan when it approves, funds, or implements an action that is within the scope of CBDP’s EIS/EIR (CBDP Action). An ASIP is not required for a CBDP Action if the implementing party, with written concurrence from the applicable Fishery Agency(ies) (USFWS and/or NOAA Fisheries) determines that the action is not likely to modify critical habitat designated pursuant to FESA or adversely affect a species covered under the MSCS.

As a result of the CBDP Program being developed subsequent to the CVPIA, AFRP actions have been integrated with the CBDP Ecosystem Restoration Program. Specifically, the CBDP ROD, Attachment 3, Implementation Memorandum of Understanding identifies AFRP actions as a CBDP Category A program. Category A includes programs and funding that should be consistent with the CBDP Program objectives and priorities and submitted to the CBDP Policy Group for review and recommended approval. Accordingly, AFRP projects have been functionally integrated with the CBDP ERP proposal solicitation process to select projects for funding. The AFRP has participated in the project selection process and considered funding program-appropriate projects solicited through the CBDP ERP. Accordingly, Restoration Actions incorporated into the CBDP ERP are required to prepare an ASIP.

National Historic Preservation Act, Section 106

Section 106 of the NHPA requires all federal agencies to assess the adverse effects of a proposed action on properties listed and eligible for listing on the NRHP. The following discussion presents practical recommendations for complying with Section 106 of the NHPA. See Chapter 4 for a complete discussion of the requirements of Section 106 and the State Historic Preservation Officer (SHPO) and Advisory Council on Historic Preservation (ACHP) consultation process.

Consultation

The Habitat Restoration Project Manager must be aware of specific requirements for compliance with Section 106 of the NHPA. Where there is federal agency involvement (i.e., a "proposal for federal action"), the proposed action cannot be implemented without the federal agency complying with Section 106 of the NHPA.

Although the consultation requirement for Section 106 is not as defined as the consultation requirement for compliance with Section 7 of the ESA, it is no less important to a successful permitting strategy. Section 106 requires the federal agency to consult with the SHPO regarding those properties on the project site that are listed or eligible for listing on the NRHP. The SHPO also reviews the federal agency's assessment of project impacts on properties that are listed and eligible for listing that may be affected by the proposed action. If a determination of adverse effect is made, SHPO consults with the federal agency regarding appropriate measures to avoid or reduce the effect on the properties.

The ACHP independently reviews the analysis and any agreements made between the federal agency and the SHPO. Consultation with the SHPO and the ACHP may take a substantial amount of time. Because of the number of projects submitted for review and the limited number of SHPO staff available to process Section 106 compliance requests, Section 106 compliance may delay implementation of the Restoration Plan action if considerations for historic properties are not factored into implementation of the Restoration Plan action early in the process. Like Section 404 and ESA, Section 106 impact assessment and consultation should be undertaken concurrently with the planning, NEPA, and CEQA processes to the extent practicable.

Survey and Effects Assessment

Area of Potential Effects

A survey for properties on a project site should start with assessment of the area of potential effects (APE). The survey area depends somewhat on the extent of the federal agency "permit area"; however, the APE may be defined differently by the Corps than by another federal agency (typically more narrowly). After defining the permit area, the Habitat Restoration Project Manager should conduct a records search of the sites listed on the NRHP and review all relevant local information regarding sites eligible for listing on the NRHP. The Habitat Restoration Project Manager should also notify any concerned or potentially interested Native American person or group.

After surveying the APE, the Habitat Restoration Project Manager should document the findings of the survey. Survey protocol may vary depending on the resource and location. Also, it should be noted that survey protocol sufficient to comply with NEPA and CEQA may not be sufficient to comply with SHPO and ACHP requirements.

Criteria for NRHP Eligibility

When assessing the effect of the action on the property, the Habitat Restoration Project Manager should first address the reasons why the property is or should be listed. A property could be listed on the NRHP because of its association with the life of an important person; its potential to yield information regarding prehistory or history; or its representation of a broad pattern of history or the distinctive work of an artist, architecture, or style. Eligibility of a particular property depends to a great extent on its location. It is important to work with cultural resource experts who are familiar with the area.

Determination of Effect

Even though a project is designed to avoid a property, the property may still be affected because of the reasons for which it was listed or is eligible for listing (e.g., a historic isolated structure or historic district may lose the appropriate setting because of the presence of the project, even though the project avoids actually touching the property).

Mitigation Requirements and Planning

The SHPO and the ACHP typically have stricter requirements for mitigation for effects on properties listed and eligible for listing on the NRHP than NEPA and CEQA. Under NEPA and CEQA, the lead agency may determine either that the effect on the property is less than significant or that with mitigation the impact is reduced to a less-than-significant level. However, mitigation that satisfies NEPA and CEQA

may not be enough to satisfy the SHPO or the ACHP. Unlike CEQA, agency NEPA regulations vary greatly and should be reviewed to determine whether they have incorporated the Section 106 standards.

Clean Water Act, Section 401

Section 401 of the Clean Water Act requires federal agencies to document that any action authorized by federal license or permit does not violate state water quality control requirements. The following discussion presents practical recommendations for complying with Section 401 of the Clean Water Act. See Chapter 4 for a complete discussion of the requirements of Section 401 and the RWQCB permit process.

Compliance Requirement

Implementation of Restoration Plan actions will require issuance of a federal permit or license (typically Section 404) and therefore, will require compliance with Section 401 of the Clean Water Act. The federal agency issuing the permit or license must obtain certification from the state (through the RWQCBs administering the SWRCB program) regarding the proposed action's compliance with state water quality control requirements. For certain actions, the need to obtain certification may be waived if the action is shown to have minimal water quality effects. For all federal actions, SWRCB, acting through the RWQCBs, will need to be involved in the environmental review process for the proposed action.

The most efficient method of Section 401 compliance is to obtain a waiver of certification requirements. The RWQCB processes the applications for certification of water quality control standards. If certification requirements are not waived, the RWQCB must forward the application to SWRCB with a recommendation of certification or denial; the RWQCB can recommend conditions that should be incorporated into the action to meet certification requirements. The RWQCB does not forward applications to SWRCB if certification requirements are waived; therefore, in order to avoid the longer process of a combined RWQCB and SWRCB review, the Habitat Restoration Project Manager should incorporate any water quality mitigation into the project prior to submitting an application for Section 401 certification.

CEQA Compliance Requirement

The review of an application for Section 401 certification is considered a discretionary action, or a "project," requiring the RWQCB or SWRCB to comply with CEQA. Therefore, even if the RWQCB determines that the requirement for Section 401 certification is waived for the proposed action, the action is required to comply with CEQA. This CEQA trigger is important to identify early in the process since it may be the only CEQA trigger for a proposed action and can be easily overlooked causing delays in project implementation. Due to staffing issues, if a state or local agency other than the SWRCB or RWQCB is involved in the environmental review of the proposed action, they should be the CEQA lead agency. Where the RWQCB or SWRCB is not the CEQA lead agency, it will need to be considered a responsible agency for purposes of complying with CEQA and will need to use the CEQA lead agency's document when reviewing the application for Section 401 certification.

The timing of CEQA document preparation sometimes does not allow the CEQA document to be completed by the time the application for Section 401 certification is submitted to the RWQCB. Although

the RWQCB is required to process the application even though the CEQA process is not complete, it is required that the relevant information from the environmental review of the water quality effects of the proposed action be submitted to the RWQCB.

For certain Restoration Plan actions, the requirement of CEQA may not be triggered except by Section 401 certification application to the RWQCB or SWRCB. As mentioned above, it is sometimes overlooked that these actions that involve only federal agencies (e.g., proposed by federal agency, on federal land, having no state or local agency involvement that requires CEQA compliance) typically will still require compliance with Section 401 of the Clean Water Act, which in turn will involve the RWQCB or SWRCB and therefore, trigger the need for CEQA compliance. In these instances, the RWQCB or SWRCB will act as lead agency for purposes of complying with CEQA.

California Endangered Species Act, California Fish and Game Code, Sections 2080 and 2081

CESA does not require formal consultation; however, CEQA does require that DFG be a reviewing agency for all CEQA documents if the fish and wildlife resources of the state may be affected by the proposed action. Although DFG's involvement is not considered formal "consultation" requiring DFG to issue findings regarding whether the action could jeopardize the continued existence of the state-listed species, DFG will review and comment on the CEQA document regarding the impacts and mitigation for fish and wildlife resources. It is recommended that, for any actions that could affect species listed under CESA, DFG be consulted informally. If take of a California listed species may occur, DFG will require the issuance of a 2081 Incidental Take Permit. An Incidental Take Permit will require that impacts be minimized and "fully" mitigated in addition to a determination that the species will not be jeopardized by the issuance of the permit.

The consultation process under CESA also differs from ESA's Section 7 consultation process in documentation requirements. Under CESA, no separate biological assessment is required to be submitted when consultation with DFG is requested. Because the CESA consultation process is directly linked to the CEQA process, the CEQA document should serve as the equivalent to the ESA biological assessment.

See Chapter 4 for a complete discussion of the requirements under CESA.

CESA Take Prohibition

CESA prohibits the "take" of a species listed as threatened or endangered under the state act (Fish and Game Code Section 2080). "Take" is defined by CESA as "hunt, pursue, catch, capture, or kill or attempt to hunt, pursue, catch, capture, or kill" (Fish and Game Code Section 86). It includes "any act that is the proximate cause of the death of an individual of a listed species or any act a natural or probable consequence of which is the death of any individual of a listed species" (May 15, 1995 California Attorney General Opinion). According to the Attorney General's opinion, CESA, unlike the federal ESA, does not prohibit indirect harm to CESA-listed species by way of habitat modification.

Take Exceptions

CESA provides for take exceptions in the following instances:

- ❖ DFG-issued permits or MOUs for take of a species listed under CESA for scientific, educational, or management purposes (Fish and Game Code Section 2081)
- ❖ NCCP Act multiple-species habitat plans (Fish and Game Code Section 2835)

DFG's Use of 2081 Incidental Take Permits

Prior to May 1997, DFG authorized incidental take for state-listed species by issuing “2081 Management Authorizations” under its interpretation of the “management purposes” exception to CESA’s take prohibition. This approach was held to be inconsistent with CESA in April 1997 by a California appellate court (*Planning and Conservation League v. Department of Fish and Game*). In response, the legislature amended CESA, effective January 1998, establishing a formal incidental take permit program similar to the FESA section 10(a)(1)(B) permit. This law removed the legal uncertainty regarding the validity of existing or pending 2081 Management Authorizations requiring that impacts of the take of listed species be minimized and fully mitigated, using measures that are “roughly proportional” to the impact of the authorized taking and are “capable of successful implementation.”

Need for Federal Agencies to Comply with State Law

There may be some question regarding the need for federal agencies to comply with CESA. Typically, federal agencies are not required to comply with state law unless the federal law specifically requires compliance with state law (e.g., federal Clean Water Act expressly requires compliance with state water quality laws).

CESA is not authorized as part of the federal ESA, and certain federal agencies may determine that compliance with CESA and obtaining a Section 2081 Incidental Take Permit are not necessary. However, it is recommended that Habitat Restoration Project Managers involve DFG and the Section 2081 Incidental Take Permits because most Restoration Plan actions will involve state or local agencies, and because most species listed under the federal ESA are also listed under CESA. Failure to involve DFG and Section 2081 Incidental Take Permits may not hinder federal approvals but could create delays associated with required state approvals. Further, CESA provides for the use of federal ESA incidental take permits for species listed under both California and federal acts. The process requires the applicant to sent notice to DFG along with a copy of the federal permit. DFG then reviews the permit for consistency with CESA.

CEQA Compliance with Section 2081 Incidental Take Permit

In the past, DFG and the state Attorney General had taken the position that the issuance of an Incidental Take Permit did not require compliance with CEQA; however, this is no longer the case. DFG’s regulations currently recognize that the issuance of a 2081 Incidental Take Permit triggers CEQA. Therefore, DFG requires they act as either a responsible or lead agency pursuant to CEQA when issuing a 2081 Incidental Take Permit.

Natural Communities Conservation Plans versus Section 2081 Incidental Take Permit

Section 2835 of the California Fish and Game Code provides an alternative to obtaining incidental take authorization through a Section 2081 Incidental Take Permit. Under Section 2835, the development of a multiple-species habitat plan, according to the NCCP Act, may include independent incidental take authority.

The new Natural Community Conservation Planning Act was signed into law in February 2002 and went into effect on January 1, 2003. This new Act repeals and replaced the previous NCCPA.

The NCCPA authorizes and encourages conservation planning on a regional scale in California. The NCCPA addresses the conservation of natural communities, as well as individual species. The mechanism for this regional conservation is the development of natural community conservation plans (NCCPs) that provide for early coordination efforts to protect natural communities, including, but not limited to, listed species or species that are not yet listed but are likely to be listed in the future. Preparation of NCCPs are voluntary, but are encouraged by DFG for large-scale, regional planning efforts.

Species Listed under Both the Federal ESA and CESA

DFG is required to participate in and use the ESA process when complying with CESA. DFG is directed by CESA that, whenever possible, it should adopt the requirements of USFWS and NOAA Fisheries as its own findings regarding those species listed under both the federal ESA and CESA. Where species are listed under both the ESA and CESA, the Habitat Restoration Project Manager should always involve DFG. As stated above, the Restoration Plan action may specifically require CESA compliance and DFG may have specific knowledge of particular species issues that may be relevant to the federal action. Under specific circumstances, DFG may waive the requirements for the CESA incidental take permits for species that are jointly listed as threatened or endangered by the state and federal governments, if the federal incidental take permit or incidental take statement has been previously issued and is in effect.

Tiering from CBDP Programmatic Documents/Multi-Species Conservation Strategy and Action Specific Implementation Plans

Many Restoration Plan actions may qualify as CBDP projects or actions and therefore, trigger the requirement to tier from certain CBDP programmatic documents (see discussion of CBDP Tiering on p. 2-22). One such programmatic document is the “Multispecies Conservation Strategy,” dated July 2000, a technical appendix to the CBDP EIS/EIR. As part of the USFWS and NOAA Fisheries’ Programmatic Biological Opinions for CBDP, the MSCS was developed to ensure compliance with FESA, CESA, and the NCCPA. The MSCS is a comprehensive programmatic strategy for the conservation of numerous species of fish, wildlife and plants and their habitat based on key CBDP program elements. These program elements include the CBDP Ecosystem Restoration Program and the Environmental Water Account. Implementation of the MSCS is intended to ensure that entities implementing CBDP actions will satisfy the requirements of FESA, CESA, and the NCCPA.

In order to comply with the MSCS, the USFWS (defined as a CBDP “Party”) must prepare an Action Specific Implementation Plan when it approves, funds, or implements an action that is within the scope of

CBDP's EIS/EIR (CBDP Action). An ASIP is not required for a CBDP Action if the implementing party, with written concurrence from the applicable Fishery Agency(ies) (USFWS and/or NOAA Fisheries) determines that the action is not likely to modify critical habitat designated pursuant to FESA or adversely affect a species covered under the MSCS.

As a result of the CBDP Program being developed subsequent to the CVPIA, AFRP actions have been integrated with the CBDP Ecosystem Restoration Program. Specifically, the CBDP ROD, Attachment 3, Implementation Memorandum of Understanding identifies AFRP actions as a CBDP Category A program. Category A includes programs and funding that should be consistent with the CBDP Program objectives and priorities and submitted to the CBDP Policy Group for review and recommended approval. Accordingly, AFRP projects have been functionally integrated with the CBDP ERP proposal solicitation process to select projects for funding. The AFRP has participated in the project selection process and considered funding program-appropriate projects solicited through the CBDP ERP. Accordingly, Restoration Actions incorporated into the CBDP ERP are required to prepare an ASIP.

Lake or Streambed Alteration Agreement: Sections 1600-16016 of the Fish and Game Code

DFG regulates work that will substantially affect resources associated with rivers, streams, and lakes in California, pursuant to Fish and Game Code Sections 1600-1616 (amended effective January 1, 2004). Authorization (known as a Lake or Streambed Alteration Agreement) is required from DFG under Section 1602 for any person, state, or local governmental agency, or public utility prior to any action that substantially diverts or obstructs the natural flow of, or substantially change or use any material from the bed, channel, or bank of, any river, stream, or lake, or deposit or dispose of debris, waste, or other material containing crumbled, flaked, or ground pavement where it may pass into any river, stream, or lake. See Chapter 4 for a complete discussion of Lake and Streambed Alteration Agreements.

Federal Agency Involvement

As with Section 2081 of CESA, there may be some question regarding the need for federal agencies to comply with Section 1600 of the California Fish and Game Code. However, it is recommended that Habitat Restoration Project Managers involve DFG and the Lake or Streambed Alteration Agreement process because most Restoration Plan actions will involve state or local agencies. If in fact state or local agency approval will be required, failure to anticipate Section 1600 compliance requirements may result in project delays.

CEQA Compliance

In the past, DFG and the state Attorney General had determined that the agreement entered into by DFG and an applicant for a proposed action that involves the alteration of a lake or streambed is not a "project" that requires compliance with CEQA; however, this is no longer the case. Current practice is for DFG to treat the issuance of a Section 1600 agreement as a discretionary action triggering the need to comply with CEQA.

Information Requirements

When applying for a Lake or Streambed Alteration Agreement, it is necessary to submit written notification to DFG that will include a detailed description of project location, names of rivers, streams, or lakes affected, a detailed project description, copy of the CEQA document, copies of any state or federal permits already issued, and any additional information requested by DFG in addition to payment of the applicable fee. The DGF representative will typically request that Section 404 and Section 401 compliance already be completed. If appropriate mitigation has already been developed through the Section 404 and NEPA and CEQA processes, DFG may not require additional mitigation as part of the Lake or Streambed Alteration Agreement.

3

Permitting Requirements of Restoration Plan Action Categories

This chapter describes the environmental regulatory compliance requirements for general categories of restoration actions designed to increase the natural production of anadromous fish in the Central Valley and listed in USFWS' Final Restoration Plan for the AFRP, January 9, 2001 (Restoration Plan). These "action categories" were developed for purposes of this handbook to provide for the grouping of actions with similar regulatory requirements. Although this handbook was designed primarily to address the needs of Habitat Restoration Coordinators, the presentation of environmental regulatory requirements according to action categories facilitates use of the handbook by a broader range of users, particularly project managers for other actions under parts of Section 3406(b) of the CVPIA.

All the actions listed in the Restoration Plan are classified in one or more categories, as summarized in Table 2, with the exception of the following public outreach and law enforcement actions. Implementation of these actions *would not* require environmental regulatory compliance or permitting; therefore, these actions are not addressed in this handbook:

- ❖ *Cosumnes River*: Enforce Fish and Game Codes that prohibit construction of unlicensed dams
- ❖ *Merced River*: Establish a "streamwatch" program to increase public participation in river management
- ❖ *Tuolumne River*: Support the Tuolumne River Interpretive Center; establish a "streamwatch" program to increase public participation in river management
- ❖ *Central Valley-Wide*: Support programs to provide educational outreach and local involvement in restoration; develop programs to educate the public about anadromous fish issues, such as poaching and contaminants; provide additional funding for increased law enforcement to reduce illegal take of anadromous fish, stream alteration, and water pollution and to ensure adequate protection for juvenile fish at pumps and diversions

Each action category description in this chapter is divided into two major sections, which are organized as follows:

(1) Each category description begins with two to four listings, as appropriate, to direct handbook users to the appropriate sections of this chapter for information pertaining to specific actions:

- ❖ "*Definition of Actions*" specifies the range of actions covered by the category.
- ❖ "*Associated Categories*" references other categories for actions that are classified in more than one category (e.g. an action to install both fish screens and fish ladders is categorized under both "Fish Screens" and "Passage").

- ❖ *"Actions Addressed under Other Categories"* directs handbook users to other categories for actions that are related but are considered to be more appropriately classified under other categories (e.g. an action involving riparian land acquisition, although it involves riparian restoration and preservation, is categorized under "Land Acquisition" rather than "Riparian Habitat").
- ❖ *"Restoration Plan Actions"* summarizes the actions listed in the Restoration Plan that most likely fit the category. Action coordinators should use detailed information on the components of their projects and consult "Definitions of Actions," however, to decide on the most appropriate category or categories for their actions.

(2) The text of each category description is divided into two sections:

- ❖ *"Overview,"* presents background information, and
- ❖ *"Regulatory Compliance,"* discusses the applicable environmental laws, permits, and other regulatory authorizations for the category, and includes a "decision analysis" table for determining whether a regulation would apply to a particular action. Cross-references are provided for discussions in Chapter 4, which describes the permitting and agency coordination processes in detail.

Table 3, at the end of this chapter, summarizes which permits, laws, and other authorizations apply to each action category and identifies the agencies with regulatory oversight.

The action categories and associated permit requirements are discussed in this chapter as follows:

Fish Screens	3-3
Passage	3-8
Relocation of Diversions	3-14
Channel and Instream Habitat Modification	3-19
Spawning Gravel	3-24
Riparian Habitat	3-28
Meander Belts	3-34
Watershed Management	3-39
Land Acquisition	3-43
Water Quality	3-45
Temperature Management	3-49
Flow Management	3-53
Facilities Management	3-58
Water Acquisitions	3-63
Water Allocation and Water Rights Adjudication	3-67
Evaluations - Monitoring and Research	3-70

Fish Screens

Definition of Actions: Actions in this category involve installing new fish screens, improving the efficiency of existing fish screens, and installing other barriers to prevent fish entrainment in diversions and to stop fish passage into areas of poor habitat.

Associated Categories: See also "Passage" (page 3-8) for actions that include constructing fish passage facilities in conjunction with constructing or improving fish screens (e.g. at Parrott-Phelan Diversion Dam on Butte Creek). See also "Facilities Management" (page 3-58) for actions that include modifying operations at water diversion facilities, in addition to improving screens, to minimize fish entrainment (e.g. at Glenn-Colusa Irrigation District [GCID] diversion on the Sacramento River and stopping attraction flows at Crowley Gulch on Cottonwood Creek). See also "Water Quality" (page 3-45) for actions that include addressing water quality issues, as well as improving screens, to improve fish survival (e.g. Anderson-Cottonwood Irrigation District [ACID] diversion on the Sacramento River).

Actions Addressed under Other Categories: Actions that focus on relocating diversions to reduce entrainment (e.g. M&T Ranch diversion on Big Chico Creek) are addressed under "Relocation of Diversions" (page 3-14).

Restoration Plan Actions: *Upper-mainstem Sacramento River* - implement Anadromous Fish Screen Program, modify GCID water diversion facility, modify screens at ACID diversion; *Cow and Bear Creeks* - screen all diversions; *Cottonwood Creek* - construct Crowley Gulch barrier; *Battle Creek* - block fish ladders at Coleman National Fish Hatchery (CNFH), construct barrier racks at Gover Diversion Dam and waste gates from the Gover Canal, screen Orwick, Coleman Powerhouse, and PG&E diversion dams and USFWS Coleman diversion; *Butte Creek* - screen Durham Mutual, Adams, Gorrill, White Mallard, and Parrott-Phelan diversion dams; *Yuba River* - improve/construct screens at Hallwood-Cordua, Brown's Valley, and other diversions; *Bear River* - screen all diversions; *American River* - improve Fairbairn Water Treatment Plant screens; *Mokelumne, Cosumnes, Calaveras, Merced, Tuolumne, and Stanislaus Rivers* - screen all diversions; *Mainstem San Joaquin River* - reduce entrainment at Banta-Carbona, West Stanislaus, Patterson, and El Soyo diversions and smaller riparian diversions; *Sacramento-San Joaquin Delta* - screen Delta and Suisun Marsh diversions.

Overview

Hundreds of small and moderate-sized diversions (up to 50 cubic feet per second [cfs]) in the Sacramento and San Joaquin rivers and tributaries and approximately 2,000 1- to 25-cfs siphon and pump diversions in the Sacramento-San Joaquin Delta are unscreened and can contribute substantially to the loss of anadromous fish fry and smolts under certain conditions. Many large diversions (of several hundred cfs) are also unscreened. Additionally, attraction flows, such as some agricultural return flows, lead to stranding of anadromous fish.

Fish screens are placed primarily at water diversion facilities to prevent fish loss into the facilities. Fish screens and other barriers to passage are also placed at locations where fish may be attracted into off-stream areas and become stranded. Installation of new screens designed to meet the criteria of USFWS,

the National Marine Fisheries Service (NOAA-Fisheries), and California Department of Fish and Game (DFG) is planned for numerous unscreened diversions throughout the Central Valley and the Sacramento-San Joaquin Delta, and screens are planned to be upgraded in strength or effectiveness at other diversions that are already screened. For example, existing screening problems at the GCID diversion facility near Colusa on the Sacramento River are being addressed through implementation of an ongoing mitigation program. In other areas, such as the Coleman Powerhouse tailrace, screens will be installed to eliminate the attraction of adult Chinook salmon and steelhead into an area with little spawning habitat. The appropriate screen engineers from USFWS, NOAA-Fisheries, and DFG should be consulted early in the planning of fish screen activities.

Regulatory Compliance

Requirements Most Likely to Apply

Construction of fish screens and similar barriers to fish passage will most likely involve activities in navigable waters or waters of the United States and involve the discharge of dredged or fill material, triggering the need for compliance with Section 404 of the Clean Water Act, administered by the U.S. Army Corps of Engineers (Corps).

Because installation of screens will most likely occur in areas where species that are federally or state listed as threatened or endangered or that are candidates for state listing may be present, compliance with the federal Endangered Species Act (in coordination with USFWS and NOAA Fisheries) and the California Endangered Species Act (in coordination with DFG) may be required.

Separate from federal agency involvement in proposing the Restoration Plan action (which would itself require NEPA compliance), involvement of the Corps and/or USFWS and NOAA Fisheries may trigger the need for NEPA compliance and may trigger the need for compliance with the Fish and Wildlife Coordination Act when actions involve the modification of surface water. Federal agency involvement may trigger the need for compliance with Section 106 of the National Historic Preservation Act if the action would occur in an area where properties are listed, or are eligible for listing, on the National Register of Historic Places.

Because fish screen actions are likely to have the potential for discharge of a pollutant into waters of the United States and require compliance with Section 404, state certification under Section 401 of the Clean Water Act will usually be required. Because state and local authorizations may be required, the need for CEQA compliance is likely to be triggered.

The following are therefore most likely to apply to construction of new fish screens:

- ❖ NEPA
- ❖ Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act
- ❖ Section 7 or 10 of the Endangered Species Act
- ❖ Fish and Wildlife Coordination Act
- ❖ CEQA

- ❖ Section 401 of the Clean Water Act
- ❖ Section 2081 of the California Fish and Game Code - California Endangered Species Act
- ❖ Section 106 of the National Historic Preservation Act (State Historic Preservation Officer consultation)

Regulatory Compliance Triggers and Timing

The following table identifies the conditions that may trigger the need for environmental regulatory compliance for a specific action in this category. Only those laws, permits, and other authorizations that may apply to fish screen actions are listed, with the triggers for each. See Table 3 at the end of this chapter for a summary listing of permits and authorizations that pertain to each action category. Examples of permit applications are provided in Appendix B.

Because the environmental effects associated with these actions are expected to be minimal and the environmental benefits are expected to be high, the processing and issuance of these permits and requirements are not expected to receive a high level of agency scrutiny; therefore, the timeframe for receiving agency authorizations should be minimal.

The permits and requirements listed below are more likely to pertain to constructing new fish screens than to upgrading existing screens; although these same permits may be required for modifying or upgrading existing fish screens, the environmental impacts of such actions would likely be much less than those of construction, and permitting would be streamlined for changes to existing screens.

Decision Analysis Table for Determining Regulatory Compliance Requirements of Fish Screen Actions	
Do Any of the Following Apply?	If So, Compliance Is Required with:
<ul style="list-style-type: none"> The action is considered a federal agency proposal, and environmental effects of the action are not adequately addressed in the programmatic EIS (CVPIA PEIS) or have substantially changed since completion of the PEIS 	NEPA (see page 4-6)
<ul style="list-style-type: none"> The action is located in waters of the United States, including wetlands, and/or the action is located in navigable waters of the United States, and: <ul style="list-style-type: none"> The action is considered a discharge of dredged or fill material The action would affect facilities designed, built, or managed by the Corps 	Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act (see page 4-16)
<ul style="list-style-type: none"> The action is considered a major construction activity and species listed as threatened or endangered under the federal Endangered Species Act (ESA) may be found in the project area; the action may affect the listed species (Section 7) The action may result in the "take" of a species listed as threatened or endangered under the ESA (Section 7 or 10) 	Section 7 or 10 of the Endangered Species Act/ Action Specific Implementation Plan (see page 4-33)
<ul style="list-style-type: none"> The action is considered a federal agency proposal and proposes to control or modify surface water 	Fish and Wildlife Coordination Act (see page 4-41)
<ul style="list-style-type: none"> The action is considered a federal agency proposal and is located within or may affect wetlands 	Executive Order 11990 – Protection of Wetlands (see page 4-67)
<ul style="list-style-type: none"> The action is considered a federal agency proposal and may affect minority or low-income populations 	Executive Order 12898 – Environmental Justice in Minority and Low-Income Populations (see page 4-69)
<ul style="list-style-type: none"> The action involves a state or local agency action and is considered a project for CEQA purposes 	CEQA (see page 4-6)
<ul style="list-style-type: none"> The action involves a federal license or permit that may affect state water quality, and the action would result in a discharge of a pollutant into waters of the United States 	Section 401 of the Clean Water Act (see page 4-74)
<ul style="list-style-type: none"> The action would result in any discharge or change in discharge of waste (non-point or point source), other than to a community sewer system, which could affect the quality of either surface or groundwater 	Waste Discharge Requirements (see page 4-82)

<ul style="list-style-type: none"> ♦ A species listed as a candidate, threatened, or endangered under the California Endangered Species Act (CESA) may be present in the project area ♦ The action may result in the "take" of a species listed under CESA (Section 2081) 	<p>Section 2081 of the California Fish and Game Code – California Endangered Species Act/ Action Specific Implementation Plan (see page 4-90)</p>
<ul style="list-style-type: none"> ♦ The action involves any activity that will divert or obstruct the natural flow or change the bed, channel, or bank of any river, stream, or lake ♦ The action involves the use or alteration of any streambed material ♦ The action occurs within the annual high-water mark of a wash, stream, or lake 	<p>Section 1602 Streambed Alteration Agreement (see page 4-97)</p>
<ul style="list-style-type: none"> ♦ The action is considered a federal agency proposal and occurs in an area where properties are listed, or are eligible for listing, on the National Register of Historic Places 	<p>Section 106 of the National Historic Preservation Act (State Historic Preservation Officer consultation) (see page 4-101)</p>
<ul style="list-style-type: none"> ♦ The action occurs in tideland; submerged land; the bed of a navigable river, stream, lake, bay, estuary, inlet, or strait; swamp land, or overflowed land ♦ The action would affect water-related commerce, navigation, fisheries, recreation, open space, or other public trust uses 	<p>State Lands Commission land use lease (see page 4-107)</p>
<ul style="list-style-type: none"> ♦ The action would affect existing state flood control project facilities, including levees, dams, reservoirs, and floodways and flood control plans 	<p>State Reclamation Board encroachment permit (see page 4-112)</p>
<ul style="list-style-type: none"> ♦ The action would involve grading, building or modifying structures, special or conditional uses, modification or approval of general or specific plans (local or regional), and/or zoning ordinance amendment 	<p>City or county approvals and entitlements (see page 4-129)</p>

Passage

Definition of Actions: Actions in this category involve constructing, installing, modifying, and repairing structures designed to enhance fish passage, such as fish ladders, weirs and fishways, fish bypasses, culverts and risers, and escape channels; modifying or removing dams that block fish passage; and constructing a seasonal barrier at the head of Old River to enhance salmon migration.

Associated Categories: See also "Fish Screens" (page 3-3) for actions that include using screens or other devices to protect fish from entrainment or stranding, in addition to facilitating passage (e.g. at Parrott-Phelan Diversion Dam). See also "Relocation of Diversions" (page 3-14) for actions that include moving a diversion facility in addition to using ladders or other means of facilitating fish passage (e.g. the Western Canal Dam removal and siphon construction on Butte Creek). See also "Flow Management" (page 3-53) for actions that include managing flows, in addition to modifying physical barriers or providing fish passage facilities (e.g. at Daguerre Point Dam on the Yuba River). See also "Water Quality" (page 3-45) for actions that include addressing water quality problems, in addition to providing physical passage, to enhance fish survival (e.g. at Patterson Sand and Gravel on the Bear River and at McCormick-Saeltzer Dam on Clear Creek).

Actions Addressed under Other Categories: Actions that focus on modification of natural channel features to enhance fish passage are addressed under "Channel and Instream Habitat Modification" (page 3-19). Actions that focus on providing barriers to prevent fish passage are addressed under "Fish Screens" (page 3-3). Actions that focus on increasing flows to enhance fish passage are addressed under "Flow Management" (page 3-53). Such actions that focus on supplementing flows with water acquired from willing sellers are addressed under "Water Acquisitions" (page 3-63). Actions that focus on modifying operations of facilities to increase flows that will enhance fish passage are addressed under "Facilities Management" (page 3-58).

Restoration Plan Actions: *Upper-mainstem Sacramento River* - construct an escape channel from the Keswick Dam stilling basin to the Sacramento River; *Clear Creek* - provide fish passage facilities at McCormick-Saeltzer Dam; *Cow Creek* - improve passage at agricultural diversion dams; *Big Chico Creek* - repair the Iron Canyon fish ladder, repair the Lindo Channel weir and fishway; *Butte Creek* - build new high-water-volume fish ladders at Durham Mutual, Adams, Gorrill, and White Mallard dams, remove the Western Canal Dam and McPherrin and McGowan dams, eliminate stranding at White Mallard Duck Club outfall, rebuild the culvert and riser at Drumheller Slough outfall, install a fish ladder at Parrott-Phelan Diversion Dam; *Yuba River* - construct or improve fish bypass at Hallwood-Cordua water diversion, modify fish ladders and the dam face at Daguerre Point Dam; *Bear River* - negotiate removal or modification of the culvert crossing at Patterson Sand and Gravel and other physical barriers to migration; *Calaveras River* - facilitate passage at existing diversion dams and barriers; *Sacramento-San Joaquin Delta* - construct and operate seasonally a barrier at the head of Old River.

Overview

Diversion dams and other human-made barriers on the Sacramento and San Joaquin rivers and their tributaries are obstacles to upstream and downstream passage of salmon and steelhead juveniles and adults. A variety of actions focus on modifying or removing some of the barriers that are deemed

detrimental to restoring anadromous fish runs in the Central Valley and reoperation to obtain maximum benefit from those facilities designed to aid migration.

Barriers such as McCormick-Saeltzer Dam that have been identified to significantly hinder fish migration could be removed, or adequate fish passage facilities, including Iron Canyon fish ladder, could be installed or modified. An escape channel for adult Chinook salmon and steelhead trapped in the Keswick Dam stilling basin is required by the 1993 Biological Opinion for winter-run Chinook salmon and has already been constructed. Finally, a seasonal barrier could be constructed at the head of Old River to improve Chinook salmon migration and survival if evaluations indicate it would have minimal adverse effects on other species.

Regulatory Compliance

Requirements Most Likely to Apply

Construction, installation, modification, and repair of physical structures to enhance fish passage will most likely involve activities in navigable waters or waters of the United States and involve the discharge of fill material, triggering the need for compliance with Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act, administered by the U.S. Army Corps of Engineers (Corps).

Because these actions will most likely occur in areas where species that are federally or state listed as threatened or endangered or that are candidates for state listing may be present, compliance with the federal Endangered Species Act (in coordination with USFWS and NOAA-Fisheries) and the California Endangered Species Act (in coordination with DFG) may be required.

Separate from federal agency involvement in proposing the Restoration Plan action (which would itself require NEPA compliance), involvement of the Corps and/or USFWS and NOAA-Fisheries may trigger the need for NEPA compliance, and may trigger the need for compliance with the Fish and Wildlife Coordination Act when actions involve the modification of surface water. Federal agency involvement may trigger the need for compliance with Section 106 of the National Historic Preservation Act if the action would occur in an area where properties are listed, or are eligible for listing, on the National Register of Historic Places.

Because these actions would involve activities with the potential to mobilize contaminants in surface waters and require compliance with Section 404, state certification under Section 401 of the Clean Water Act will usually be required. Because fish passage actions involving construction and repair could result in the temporary discharge of waste affecting surface water, many may require compliance with state Waste Discharge Requirements. Actions that would involve changing a streambed or altering streambed material will trigger the need for a Section 1602 Streambed Alteration Agreement with DFG. Many actions involve construction or modification of a dam, triggering the need for approval from California Department of Water Resources Division of Safety of Dams. Requirements for state and local authorizations will trigger the need for CEQA compliance.

The following are therefore most likely to apply to modifying existing fish passage facilities:

- ❖ NEPA

- ❖ Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act
- ❖ Section 7 or 10 of the Endangered Species Act
- ❖ Fish and Wildlife Coordination Act
- ❖ CEQA
- ❖ Section 401 of the Clean Water Act
- ❖ Waste Discharge Requirements
- ❖ Section 2081 of the California Fish and Game Code - California Endangered Species Act
- ❖ Section 1602 Streambed Alteration Agreement
- ❖ Section 106 of the National Historic Preservation Act (State Historic Preservation Officer consultation)
- ❖ Approval of plans and specifications to construct or enlarge a dam or reservoir and certificate of approval to store water and to repair or alter a dam or reservoir

Regulatory Compliance Triggers and Timing

The following table identifies the conditions that may trigger the need for environmental regulatory compliance for a specific action in this category. Only those laws, permits, and other authorizations that may apply to passage actions are listed, with the triggers for each. See Table 3 at the end of this chapter for a summary listing of permits and authorizations that pertain to each action category. Examples of permit applications are provided in Appendix B.

Because the environmental effects associated with these actions are expected to be minimal and the environmental benefits are expected to be high, the processing and issuance of these permits and requirements are not expected to receive a high level of agency scrutiny; therefore, the timeframe for receiving agency authorizations should be minimal.

Decision Analysis Table for Determining Regulatory Compliance Requirements of Passage Actions	
Do Any of the Following Apply?	If So, Compliance Is Required with:
<ul style="list-style-type: none"> The action is considered a federal agency proposal, and environmental effects of the action are not adequately addressed in the programmatic EIS (CVPIA PEIS) or have substantially changed since completion of the PEIS 	NEPA (see page 4-6)
<ul style="list-style-type: none"> The action is located in waters of the United States, including wetlands, and/or the action is located in navigable waters of the United States, and: <ul style="list-style-type: none"> The action is considered a discharge of dredged or fill material The action would affect facilities designed, built, or managed by the Corps 	Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act (see page 4-16)
<ul style="list-style-type: none"> The action is considered a major construction activity and species listed as threatened or endangered under the federal Endangered Species Act (ESA) may be found in the project area; the action may affect the listed species (Section 7) The action may result in the "take" of a species listed as threatened or endangered under the ESA (Section 7 or 10) 	Section 7 or 10 of the Endangered Species Act/ Action Specific Implementation Plan (see pages 4-33)
<ul style="list-style-type: none"> The action is considered a federal agency proposal and proposes to control or modify surface water 	Fish and Wildlife Coordination Act (see pages 4-41)
<ul style="list-style-type: none"> The action occurs on or requires access across federal public lands administered by U.S. Bureau of Reclamation (USBR) or U.S. Bureau of Land Management (BLM) The action modifies, improves, or affects facilities designed, built, operated, maintained or otherwise managed by USBR or BLM 	Federal agency authority (encroachment approval) from USBR or BLM (see pages 4-50 and 4-52)
<ul style="list-style-type: none"> The action is considered a federal agency proposal and is located within or may affect a floodplain 	Executive Order 11988 – Floodplain Management (see page 4-65)
<ul style="list-style-type: none"> The action is considered a federal agency proposal and is located within or may affect wetlands 	Executive Order 11990 – Protection of Wetlands (see page 4-67)
<ul style="list-style-type: none"> The action is considered a federal agency proposal and may affect minority or low-income populations 	Executive Order 12898 – Environmental Justice in Minority and Low-Income Populations (see page 4-69)
<ul style="list-style-type: none"> The action is considered a federal agency proposal and may affect Native American religious practices 	American Indian Religious Freedom Act of 1978 (see page 4-71)

♦ The action may affect Indian Trust Assets	Indian Trust Assets (see page 4-72)
♦ The action involves a state or local agency action and is considered a project for CEQA purposes	CEQA (see page 4-6)
♦ The action involves a federal license or permit that may affect state water quality, and the action would result in a discharge of a pollutant into waters of the United States	Section 401 of the Clean Water Act (see page 4-74)
♦ The action would result in a new or continued point-source discharge of pollutants into surface waters of the United States	National Pollutant Discharge Elimination System (see page 4-78)
♦ The action would result in any discharge or change in discharge (non-point or point source), other than to a community sewer system, which could affect the quality of either surface or groundwater	Waste Discharge Requirements (see page 4-82)
♦ A species listed as a candidate, threatened, or endangered under the California Endangered Species Act (CESA) may be present in the project area ♦ The action may result in the "take" of a species listed under CESA (Section 2081)	Section 2081 of the California Fish and Game Code - California Endangered Species Act/Action Specific Implementation Plan (see page 4-90)
♦ The action involves any activity that will divert or obstruct the natural flow or change the bed, channel, or bank of any river, stream, or lake ♦ The action involves the use or alteration of any streambed material ♦ The action occurs within the annual high-water mark of a wash, stream, or lake	Section 1602 Streambed Alteration Agreement (see page 4-97)
♦ The action is considered a federal agency proposal and occurs in an area where properties are listed, or are eligible for listing, on the National Register of Historic Places	Section 106 of the National Historic Preservation Act (State Historic Preservation Officer consultation) (see page 4-101)
♦ The action occurs in tideland; submerged land; the bed of a navigable river, stream, lake, bay, estuary, inlet, or strait; swamp land, or overflowed land ♦ The action would affect water-related commerce, navigation, fisheries, recreation, open space, or other public trust uses	State Lands Commission land use lease (see page 4-107)
♦ The action would affect existing state flood control project facilities, including levees, dams, reservoirs, and floodways and flood control plans	State Reclamation Board encroachment permit (see page 4-112)

<ul style="list-style-type: none">♦ The action involves construction, modification, or enlargement of a dam or reservoir♦ The action involves the repair or alteration of an existing dam or reservoir	Approval of plans and specifications to construct or enlarge a dam or reservoir and certificate of approval to store water and to repair or alter a dam or reservoir (see page 4-117)
<ul style="list-style-type: none">♦ The action would involve grading, building or modifying structures, special or conditional uses, modification or approval of general or specific plans (local or regional), and/or zoning ordinance amendment	City or county approvals and entitlements (see page 4-129)

Relocation of Diversions

Definition of Actions: Actions in this category involve relocating diversion facilities to eliminate fish entrainment or passage problems at existing facilities.

Associated Categories: See also "Passage" (page 3-8) for actions that involve both removing barriers to fish passage and relocating diversion points (e.g. removing the Western Canal Dam and constructing the Western Canal Siphon on Butte Creek).

Restoration Plan Actions: *Big Chico Creek* - relocate and screen the M&T Ranch diversion; *Butte Creek* - install portable pumps as alternative to Little Dry Creek diversion, remove the Western Canal Dam and construct the Western Canal Siphon.

Overview

Relocating pumps and diversions can substantially reduce fish losses in some locations. Relocating diversion facilities sometimes includes consolidating diversions, so that newer, screened facilities can be used in place of numerous unscreened diversions. Replacing facilities may eliminate or reduce entrainment of fry and juveniles outmigrating from the system, and flow reversals near the pump station that can confuse migrating adult and juvenile fish. Also, relocating diversions from smaller streams to larger waterways can allow more water to remain in the smaller waterways and reduce the number of entrained fish.

Regulatory Compliance

Requirements Most Likely to Apply

Installing pumps at new diversion locations will most likely involve activities in navigable waters or waters of the United States and involve the discharge of fill material, triggering the need for compliance with Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act, administered by the U.S. Army Corps of Engineers (Corps).

Because these actions will most likely occur in areas where species that are federally or state listed as threatened or endangered or that are candidates for state listing may be present, compliance with the federal Endangered Species Act (in coordination with USFWS and NOAA-Fisheries) and the California Endangered Species Act (in coordination with DFG) may be required.

Separate from federal agency involvement in proposing the Restoration Plan action (which would itself require NEPA compliance), involvement of the Corps and/or USFWS and NOAA-Fisheries may trigger the need for NEPA compliance and for compliance with the Fish and Wildlife Coordination Act when actions involve the modification of surface water, and would trigger the need for compliance with Executive Order 11990 because the actions would occur in or affect wetlands. Federal agency involvement may trigger the need for compliance with Section 106 of the National Historic Preservation

Act if the action would occur in an area where properties are listed, or are eligible for listing, on the National Register of Historic Places.

Because these actions would involve activities with the potential to mobilize contaminants in surface waters and require compliance with Section 404, state certification under Section 401 of the Clean Water Act will usually be required. Actions in this category would occur within the annual high-water mark of a stream and would divert or obstruct the natural flow of a river or stream, triggering the need for a Section 1602 Streambed Alteration Agreement with DFG. Because many actions to relocate diversions may affect levees, the need for a State Reclamation Board encroachment permit is likely. Requirements for state and local authorizations will trigger the need for CEQA compliance.

The following are therefore most likely to apply to relocating facilities:

- ❖ NEPA
- ❖ Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act
- ❖ Section 7 or 10 of the Endangered Species Act
- ❖ Fish and Wildlife Coordination Act
- ❖ Executive Order 11990 (protection of wetlands)
- ❖ CEQA
- ❖ Section 401 of the Clean Water Act
- ❖ Section 2081 of the California Fish and Game Code - California Endangered Species Act
- ❖ Section 1602 Streambed Alteration Agreement
- ❖ Section 106 of the National Historic Preservation Act (State Historic Preservation Officer consultation)
- ❖ State Reclamation Board encroachment permit

Regulatory Compliance Triggers and Timing

The following table identifies the conditions that may trigger the need for environmental regulatory compliance for a specific action in this category. Only those laws, permits, and other authorizations that may apply to actions involving relocation of diversion facilities are listed, with the triggers for each. See Table 3 at the end of this chapter for a summary listing of permits and authorizations that pertain to each action category. Examples of permit applications are provided in Appendix B.

The environmental effects associated with these actions may be more than minimal; therefore, the processing and issuance of these permits may require a higher level of regulatory agency oversight for actions in this category than for those in some other categories. Because permit processing could take

longer, agency contacts with the Corps and endangered species units of USFWS and NOAA Fisheries should be started first.

Decision Analysis Table for Determining Regulatory Compliance Requirements of Relocation of Diversions	
Do Any of the Following Apply?	If So, Compliance Is Required with:
<ul style="list-style-type: none"> ♦ The action is considered a federal agency proposal, and environmental effects of the action are not adequately addressed in the programmatic EIS (CVPIA PEIS) or have substantially changed since completion of the PEIS 	NEPA (see page 4-6)
<ul style="list-style-type: none"> ♦ The action is located in waters of the United States, including wetlands, and/or the action is located in navigable waters of the United States, and: <ul style="list-style-type: none"> ♦ The action is considered a discharge of dredged or fill material ♦ The action would affect facilities designed, built, or managed by the Corps 	Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act (see page 4-16)
<ul style="list-style-type: none"> ♦ The action is considered a major construction activity and species listed as threatened or endangered under the federal Endangered Species Act (ESA) may be found in the project area; the action may affect the listed species (Section 7) ♦ The action may result in the "take" of a species listed as threatened or endangered under the ESA (Section 7 or 10) 	Section 7 or 10 of the Endangered Species Act/Action Specific Implementation Plan (see page 4-33)
<ul style="list-style-type: none"> ♦ The action is considered a federal agency proposal and proposes to control or modify surface water 	Fish and Wildlife Coordination Act (see page 4-41)
<ul style="list-style-type: none"> ♦ The action occurs on or requires access across federal public lands administered by U.S. Bureau of Reclamation (USBR), U.S. Bureau of Land Management (BLM), National Park Service (NPS), U.S. Forest Service (USFS), or Bureau of Indian Affairs (BIA) ♦ The action modifies, improves, or affects facilities designed, built, operated, maintained or otherwise managed by USBR, BLM, NPS, USFS, or BIA 	Federal agency authority (encroachment approval) from USBR, BLM, NPS, USFS, or BIA (see pages 4-50, 4-52, 4-55, 4-57 and 4-61)
<ul style="list-style-type: none"> ♦ The action is considered a federal agency proposal and is located within or may affect wetlands 	Executive Order 11990 – Protection of Wetlands (see page 4-67)
<ul style="list-style-type: none"> ♦ The action is considered a federal agency proposal and may affect minority or low-income populations 	Executive Order 12898 – Environmental Justice in Minority and Low-Income Populations (see page 4-69)
<ul style="list-style-type: none"> ♦ The action is considered a federal agency proposal and 	American Indian Religious Freedom

may affect Native American religious practices	Act of 1978 (see page 4-71)
♦ The action may affect Indian Trust Assets	Indian Trust Assets (see page 4-72)
♦ The action involves a state or local agency action and is considered a project for CEQA purposes	CEQA (see page 4-6)
♦ The action involves a federal license or permit that may affect state water quality, and the action would result in a discharge of a pollutant into waters of the United States	Section 401 of the Clean Water Act (see page 4-74)
♦ The action would result in a new or continued point-source discharge of pollutants into surface waters of the United States	National Pollutant Discharge Elimination System (see page 4-78)
♦ The action would result in any discharge or change in discharge (non-point or point source), other than to a community sewer system, which could affect the quality of either surface or groundwater	Waste Discharge Requirements (see page 4-82)
♦ A species listed as a candidate, threatened, or endangered under the California Endangered Species Act (CESA) may be present in the project area ♦ The action may result in the "take" of a species listed under CESA (Section 2081)	Section 2081 of the California Fish and Game Code - California Endangered Species Act/Action Specific Implementation Plan (see page 4-90)
♦ The action involves any activity that will divert or obstruct the natural flow or change the bed, channel, or bank of any river, stream, or lake ♦ The action involves the use or alteration of any streambed material ♦ The action occurs within the annual high-water mark of a wash, stream, or lake	Section 1602 Streambed Alteration Agreement (see page 4-97)
♦ The action is considered a federal agency proposal and occurs in an area where properties are listed, or are eligible for listing, on the National Register of Historic Places	Section 106 of the National Historic Preservation Act (State Historic Preservation Officer consultation) (see page 4-101)
♦ The action occurs in tideland; submerged land; the bed of a navigable river, stream, lake, bay, estuary, inlet, or strait; swamp land, or overflowed land ♦ The action would affect water-related commerce, navigation, fisheries, recreation, open space, or other public trust uses	State Lands Commission land use lease (see page 4-107)
♦ The action would affect existing state flood control project facilities, including levees, dams, reservoirs, and floodways and flood control plans	State Reclamation Board encroachment permit (see page 4-112)
♦ The action would be located within the right-of-way (ROW) of state-owned roadway, including bridge alterations	California Department of Transportation encroachment permit/ROW (see page 4-121)
♦ The action involves temporary or mobile facilities or	Air district Authority to Construct and

<p>equipment that may emit air pollutants</p> <ul style="list-style-type: none">♦ The action involves facilities or equipment considered a stationary source (e.g. building, structure, installation) that may emit air pollutants♦ The action involves a proposal to operate equipment that emits pollutants from a stationary or mobile source♦ The action involves construction, operation, or maintenance that may generate fugitive dust emissions	Permit to Operate (see page 4-125)
<ul style="list-style-type: none">♦ The action would involve grading, building or modifying structures, special or conditional uses, modification or approval of general or specific plans (local or regional), and/or zoning ordinance amendment	City or county approvals and entitlements (see page 4-129)

Channel and Instream Habitat Modification

Definition of Actions: Actions in this category involve restoring channel configuration and structure (e.g. consolidating braided channels) and physical in-channel conditions in general (e.g. removing natural barriers impeding fish passage). Flow- and temperature-related actions are addressed under "Flow Management" and "Temperature," respectively.

Associated Categories: Some actions (e.g. on the Merced, Tuolumne, and Stanislaus rivers) include several components of habitat restoration, in addition to instream habitat restoration, that may be characterized as watershed management, riparian habitat improvement, and spawning gravel restoration. See also "Watershed Management" (page 3-39), "Riparian Habitat" (page 3-28), and "Spawning Gravel" (page 3-24) for such actions.

Actions Addressed under Other Categories: Actions that focus only on restoring spawning grounds are addressed under "Spawning Gravel" (page 3-24). Actions that focus on restoring riparian habitat and protecting riparian corridors to enhance instream habitat are addressed under "Riparian Habitat" (page 3-29). Actions that focus on modifying stream temperatures and modifying flows to improve habitat conditions are addressed under "Temperature Management" (page 3-49) and "Flow Management" (page 3-53), respectively. Actions that focus on modifying operations of reservoirs and diversion facilities or on acquisition of water to improve flows for anadromous fish are addressed under "Facilities Management" (page 3-58) and "Water Acquisitions" (page 3-63), respectively.

Restoration Plan Actions: *Clear Creek* - restore channel conditions; *Cottonwood Creek* - restore the stream channel to prevent Anderson-Cottonwood Irrigation District (ACID) siphon from becoming a barrier; *Battle Creek* - improve fish passage by removing a bedrock ledge and boulders; *American River* - terminate programs that remove woody debris from the channel; *Merced, Tuolumne, and Stanislaus Rivers* - restore instream habitat.

Overview

Both natural channel conditions (such as the presence of boulders in some areas) and artificial changes (such as channel modification associated with gravel mining) have restricted the availability of anadromous fish habitat and passage to upstream spawning and rearing habitats. Gravel mining has left some channels, such as Clear Creek, braided and pitted. Flow splits in formerly mined areas result in passage problems for anadromous fish, and pits provide habitat for predators and trap gravel transported from upstream, hindering the recruitment of spawning gravel. Additionally, on some streams, the removal of natural materials, such as rocks and woody debris, has reduced the availability of rearing habitat and inhibited biological productivity. Restoring channel structure and in-channel habitat in these areas would restore natural processes that maintain habitat values for anadromous fish, expand available anadromous fish spawning and rearing habitat, and possibly increase the natural production of salmon and steelhead.

Actions in this category might include stream-gradient restoration, placement of berms to deflect water from mined pits, consolidation of braided channels, modification of natural barriers where they are most

detrimental or restrictive to anadromous fish passage, and placement of materials providing instream cover.

Regulatory Compliance

Requirements Most Likely to Apply

Actions involving modification of channel structure and instream habitat modification will most likely involve activities in navigable waters or waters of the United States and involve the discharge of fill material, triggering the need for compliance with Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act, administered by the U.S. Army Corps of Engineers (Corps).

Because these actions will most likely occur in areas where species that are federally or state listed as threatened or endangered or that are candidates for state listing may be present, compliance with the federal Endangered Species Act (in coordination with USFWS and NOAA-Fisheries) and the California Endangered Species Act (in coordination with DFG) may be required.

Separate from federal agency involvement in proposing the Restoration Plan action (which would itself require NEPA compliance), involvement of the Corps and/or USFWS and NOAA-Fisheries may trigger the need for NEPA compliance, and may trigger the need for compliance with the Fish and Wildlife Coordination Act when actions involve the modification of surface water. Federal agency involvement may trigger the need for compliance with Section 106 of the National Historic Preservation Act if the action would occur in an area where properties are listed, or are eligible for listing, on the National Register of Historic Places.

Actions in this category will most likely occur in or affect wetlands, triggering the need for compliance with Executive Order 11990 (protection of wetlands).

Because channel restoration actions would involve activities with the potential to mobilize contaminants in surface waters and require compliance with Section 404, state certification under Section 401 of the Clean Water Act will usually be required. Because such actions could result in the temporary discharge of waste affecting surface water, many may require compliance with state Waste Discharge Requirements. Actions in this category are likely to involve changing a streambed or altering streambed material, triggering the need for a Section 1602 Streambed Alteration Agreement with DFG. Requirements for state and local authorizations will trigger the need for CEQA compliance.

The following are therefore most likely to apply to actions involving channel and instream habitat modification:

- ❖ NEPA
- ❖ Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act
- ❖ Section 7 or 10 of the Endangered Species Act
- ❖ Fish and Wildlife Coordination Act
- ❖ Executive Order 11990 (protection of wetlands)

- ❖ CEQA
- ❖ Section 401 of the Clean Water Act
- ❖ Waste Discharge Requirements
- ❖ Section 2081 of the California Fish and Game Code - California Endangered Species Act
- ❖ Section 1602 Streambed Alteration Agreement
- ❖ Section 106 of the National Historic Preservation Act (State Historic Preservation Officer consultation)

Regulatory Compliance Triggers and Timing

The following table identifies the conditions that may trigger the need for environmental regulatory compliance for a specific action in this category. Only those laws, permits, and other authorizations that may apply to channel and instream habitat modification actions are listed, with the triggers for each. See Table 3 at the end of this chapter for a summary listing of permits and authorizations that pertain to each action category. Examples of permit applications are provided in Appendix B.

Because the environmental effects associated with these actions are expected to be minimal and the environmental benefits are expected to be high, the processing and issuance of these permits and requirements are not expected to receive a high level of agency scrutiny; therefore, the timeframe for receiving agency authorizations should be minimal.

Decision Analysis Table for Determining Regulatory Compliance Requirements of Channel and Instream Habitat Modification Actions	
Do Any of the Following Apply?	If So, Compliance Is Required with:
♦ The action is considered a federal agency proposal, and environmental effects of the action are not adequately addressed in the programmatic EIS (CVPIA PEIS) or have substantially changed since completion of the PEIS	NEPA (see page 4-6)
♦ The action is located in waters of the United States, including wetlands, and/or the action is located in navigable waters of the United States, and: ♦ The action is considered a discharge of dredged or fill material ♦ The action would affect facilities designed, built, or managed by the Corps	Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act (see page 4-16)
♦ The action is considered a major construction activity and species listed as threatened or endangered under the federal Endangered Species Act (ESA) may be found in the project area; the action may affect the listed species (Section 7) ♦ The action may result in the "take" of a species listed as threatened or endangered under the ESA (Section 7 or 10)	Section 7 or 10 of the Endangered Species Act/Action Specific Implementation Plan (see page 4-33)
♦ The action is considered a federal agency proposal and proposes to control or modify surface water	Fish and Wildlife Coordination Act (see page 4-41)
♦ The action is considered a federal agency proposal and affects a river within the National Wild and Scenic Rivers system	National Wild and Scenic Rivers Act (see page 4-46)
♦ The action is considered a federal agency proposal and is located within or may affect a floodplain	Executive Order 11988 - Floodplain Management (see page 4-65)
♦ The action is considered a federal agency proposal and is located within or may affect wetlands	Executive Order 11990 - Protection of Wetlands (see page 4-67)
♦ The action is considered a federal agency proposal and may affect minority or low-income populations	Executive Order 12898 - Environmental Justice in Minority and Low-Income Populations (see page 4-69)
♦ The action is considered a federal agency proposal and may affect Native American religious practices	American Indian Religious Freedom Act of 1978 (see page 4-71)
♦ The action may affect Indian Trust Assets	Indian Trust Assets (see page 4-72)
♦ The action involves a state or local agency action and is considered a project for CEQA purposes	CEQA (see page 4-6)
♦ The action involves a federal license or permit that may affect state water quality, and the action would result in a discharge of a pollutant into waters of the United States	Section 401 of the Clean Water Act (see page 4-74)

♦ The action would result in a new or continued point-source discharge of pollutants into surface waters of the United States	National Pollutant Discharge Elimination System (see page 4-78)
♦ The action would result in any discharge or change in discharge (non-point or point source), other than to a community sewer system, which could affect the quality of either surface or groundwater	Waste Discharge Requirements (see page 4-82)
♦ A species listed as a candidate, threatened, or endangered under the California Endangered Species Act (CESA) may be present in the project area ♦ The action may result in the "take" of a species listed under CESA (Section 2081)	Section 2081 of the California Fish and Game Code - California Endangered Species Act/Action Specific Implementation Plan (see page 4-90)
♦ The action involves any activity that will divert or obstruct the natural flow or change the bed, channel, or bank of any river, stream, or lake ♦ The action involves the use or alteration of any streambed material ♦ The action occurs within the annual high-water mark of a wash, stream, or lake	Section 1602 Streambed Alteration Agreement (see page 4-97)
♦ The action is considered a federal agency proposal and occurs in an area where properties are listed, or are eligible for listing, on the National Register of Historic Places	Section 106 of the National Historic Preservation Act (State Historic Preservation Officer consultation) (see page 4-101)
♦ The action occurs in tideland; submerged land; the bed of a navigable river, stream, lake, bay, estuary, inlet, or strait; swamp land, or overflowed land ♦ The action would affect water-related commerce, navigation, fisheries, recreation, open space, or other public trust uses	State Lands Commission land use lease (see page 4-107)
♦ The action would affect existing state flood control project facilities, including levees, dams, reservoirs, and floodways and flood control plans	State Reclamation Board encroachment permit (see page 4-112)
♦ The action would involve grading, building or modifying structures, special or conditional uses, modification or approval of general or specific plans (local or regional), and/or zoning ordinance amendment	City or county approvals and entitlements (see page 4-129)

Spawning Gravel

Definition of Action Category: Actions in this category involve restoring, replenishing, and protecting spawning gravel; constructing gravel beds; restoring and enhancing gravel recruitment; loosening sedimentation and compacted gravel; and eliminating, restricting, or modifying gravel mining operations in floodplains.

Associated Categories: See also "Facilities Management" (page 3-58) for actions that include modifying reservoir operations to improve spawning gravel conditions (e.g. cleansing and preventing sedimentation of spawning gravel on the Mokelumne River using flushing flows). See also "Watershed Management" (page 3-39) for actions that include modifying land use practices to reduce erosion and protect spawning gravel from sedimentation and "Riparian Habitat" (page 3-29) and "Channel and Instream Habitat Modification" (page 3-19) for actions that include restoring and protecting riparian habitat and instream habitat, respectively, in addition to restoring spawning gravel (e.g. on the Merced, Tuolumne, and Stanislaus rivers).

Actions Addressed under Other Categories: Actions that focus on restoring channel configuration are addressed under "Channel and Instream Habitat Modification" (page 3-19). Actions that involve creating meander belts are addressed under "Meander Belts" (page 3-34). Actions that focus on watershed protection to reduce sedimentation of spawning gravel are addressed under "Watershed Management" (page 3-39).

Restoration Plan Actions: *Upper-mainstem Sacramento River* - develop program for restoring and replenishing spawning gravel; *Clear Creek* - replenish spawning gravel and restore recruitment; *Cottonwood Creek* - establish instream gravel mining limits; *Paynes Creek* - restore and enhance spawning gravel; *Mill Creek* - improve spawning habitats for fall-run Chinook salmon; *Thomes Creek* - modify gravel mining methods; *Deer Creek* - improve spawning habitats for fall- and late-fall-run Chinook salmon; *Big Chico Creek* - replenish spawning gravel in reaches modified for flood control; *American River* - replenish spawning gravel and restore spawning grounds; *Mokelumne River* - replenish gravel, cleanse and prevent sedimentation of gravel, and eliminate or restrict gravel mining operations; *Merced, Tuolumne, and Stanislaus Rivers* - restore and replenish gravel.

Overview

The upper reaches of the Sacramento River and its tributaries and the Stanislaus, Tuolumne, and Merced rivers are important spawning and nursery areas for salmon and steelhead. Some of these areas lack sufficient spawning substrates to support target levels of salmon and steelhead production.

Spawning substrates are depleted below reservoirs by channel scour, channel armoring, sediment accretion, or dam blockage of gravel input. Natural flooding and poor watershed management can reduce spawning habitat, and gravel mining practices have resulted in channels lacking sufficient spawning gravel and opportunities for gravel recruitment.

Spawning gravel actions would expand gravel restoration programs to include watersheds that are demonstrated to have severe gravel deficits in spawning habitat. Gravel restoration actions may include loosening armored substrate, maintaining and enhancing gravel recruitment to major spawning areas in the rivers and tributaries, artificially introducing spawning-sized gravel on a continuous basis, and creating riffles engineered and constructed with graded gravel. CVPIA Section 3406(b)(13) provides funds for restoring and replenishing spawning gravels in the Sacramento, American, and Stanislaus rivers, and state funds are required on a cost-sharing basis to support these actions.

Regulatory Compliance

Requirements Most Likely to Apply

Spawning gravel replenishment, restoration, and loosening will usually involve activities in navigable waters or waters of the United States and the discharge of fill material, triggering the need for compliance with Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act, administered by the U.S. Army Corps of Engineers (Corps).

Because spawning gravel actions will most likely occur in areas where species that are federally or state listed as threatened or endangered or that are candidates for state listing may be present, compliance with the federal Endangered Species Act (in coordination with USFWS and NOAA-Fisheries) and the California Endangered Species Act (in coordination with DFG) may be required.

Separate from federal agency involvement in proposing the Restoration Plan action (which would itself require NEPA compliance), involvement of the Corps and/or USFWS and NOAA-Fisheries may trigger the need for NEPA compliance, and may trigger the need for compliance with the Fish and Wildlife Coordination Act when actions involve the modification of surface water. Federal agency involvement may trigger the need for compliance with Section 106 of the National Historic Preservation Act if the action would occur in an area where properties are listed, or are eligible for listing, on the National Register of Historic Places.

Because spawning gravel actions would involve activities with the potential to mobilize contaminants in surface waters and require compliance with Section 404, state certification under Section 401 of the Clean Water Act will usually be required. Actions that could result in a point-source discharge to waters of the United States would require compliance with the National Pollutant Discharge Elimination System, administered by regional water quality control boards. Because spawning gravel actions could result in the temporary discharge of waste affecting surface water, many may require compliance with state Waste Discharge Requirements.

All actions in this category would involve changing a streambed or altering streambed material, triggering the need for a Section 1602 Streambed Alteration Agreement with DFG. Spawning gravel actions will usually occur in the beds of navigable rivers or streams and are likely to affect public trust uses, triggering the need for a State Lands Commission land use lease. Requirements for state and local authorizations will trigger the need for CEQA compliance.

The following are therefore most likely to apply to spawning gravel actions:

- ❖ NEPA
- ❖ Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act
- ❖ Section 7 or 10 of the Endangered Species Act
- ❖ Fish and Wildlife Coordination Act
- ❖ CEQA
- ❖ Section 401 of the Clean Water Act
- ❖ National Pollutant Discharge Elimination System
- ❖ Waste Discharge Requirements
- ❖ Section 2081 of the California Fish and Game Code - California Endangered Species Act
- ❖ Section 1602 Streambed Alteration Agreement
- ❖ Section 106 of the National Historic Preservation Act (State Historic Preservation Officer consultation)
- ❖ State Lands Commission land use lease

Regulatory Compliance Triggers and Timing

The following table identifies the conditions that may trigger the need for environmental regulatory compliance for a specific action in this category. Only those laws, permits, and other authorizations that may apply to spawning gravel actions are listed, with the triggers for each. See Table 3 at the end of this chapter for a summary listing of permits and authorizations that pertain to each action category. Examples of permit applications are provided in Appendix B.

The environmental effects associated with these actions may be more than minimal; therefore, the processing and issuance of these permits may require a higher level of regulatory agency oversight for actions in this category than for those in some other categories. Because permit processing could take longer, agency contacts with the Corps and endangered species units of USFWS and NOAA-Fisheries should be started first.

Decision Analysis Table for Determining Regulatory Compliance Requirements of Spawning Gravel Actions	
Do Any of the Following Apply?	If So, Compliance Is Required with:
<ul style="list-style-type: none"> The action is considered a federal agency proposal, and environmental effects of the action are not adequately addressed in the programmatic EIS (CVPIA PEIS) or have substantially changed since completion of the PEIS 	NEPA (see page 4-6)
<ul style="list-style-type: none"> The action is located in waters of the United States, including wetlands, and/or the action is located in navigable waters of the United States, and: <ul style="list-style-type: none"> The action is considered a discharge of dredged or fill material The action would affect facilities designed, built, or managed by the Corps 	Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act (see page 4-16)
<ul style="list-style-type: none"> The action is considered a major construction activity and species listed as threatened or endangered under the federal Endangered Species Act (ESA) may be found in the project area; the action may affect the listed species (Section 7) The action may result in the "take" of a species listed as threatened or endangered under the ESA (Section 7 or 10) 	Section 7 or 10 of the Endangered Species Act/Action Specific Implementation Plan (see page 4-33)
<ul style="list-style-type: none"> The action is considered a federal agency proposal and proposes to control or modify surface water 	Fish and Wildlife Coordination Act (see page 4-41)
<ul style="list-style-type: none"> The action is considered a federal agency proposal and affects a river within the National Wild and Scenic Rivers system 	National Wild and Scenic Rivers Act (see page 4-46)
<ul style="list-style-type: none"> The action is considered a federal agency proposal and is located within or may affect a floodplain 	Executive Order 11988 - Floodplain Management (see page 4-65)
<ul style="list-style-type: none"> The action is considered a federal agency proposal and is located within or may affect wetlands 	Executive Order 11990 - Protection of Wetlands (see page 4-67)
<ul style="list-style-type: none"> The action is considered a federal agency proposal and may affect minority or low-income populations 	Executive Order 12898 - Environmental Justice in Minority and Low-Income Populations (see page 4-69)
<ul style="list-style-type: none"> The action is considered a federal agency proposal and may affect Native American religious practices 	American Indian Religious Freedom Act of 1978 (see page 4-71)
<ul style="list-style-type: none"> The action may affect Indian Trust Assets 	Indian Trust Assets (see page 4-72)
<ul style="list-style-type: none"> The action involves a state or local agency action and is considered a project for CEQA purposes 	CEQA (see page 4-6)

<ul style="list-style-type: none"> ♦ The action involves a federal license or permit that may affect state water quality, and the action would result in a discharge of a pollutant into waters of the United States 	Section 401 of the Clean Water Act (see page 4-74)
<ul style="list-style-type: none"> ♦ The action would result in a new or continued point-source discharge of pollutants into surface waters of the United States 	National Pollutant Discharge Elimination System (see page 4-78)
<ul style="list-style-type: none"> ♦ The action would result in any discharge or change in discharge (non-point or point source), other than to a community sewer system, which could affect the quality of either surface or groundwater 	Waste Discharge Requirements (see page 4-82)
<ul style="list-style-type: none"> ♦ A species listed as a candidate, threatened, or endangered under the California Endangered Species Act (CESA) may be present in the project area ♦ The action may result in the "take" of a species listed under CESA (Section 2081) 	Section 2081 of California Fish and Game Code – California Endangered Species Act/Action Specific Implementation Plan (see page 4-90)
<ul style="list-style-type: none"> ♦ The action involves any activity that will divert or obstruct the natural flow or change the bed, channel, or bank of any river, stream, or lake ♦ The action involves the use or alteration of any streambed material ♦ The action occurs within the annual high-water mark of a wash, stream, or lake 	Section 1602 Streambed Alteration Agreement (see page 4-97)
<ul style="list-style-type: none"> ♦ The action is considered a federal agency proposal and occurs in an area where properties are listed, or are eligible for listing, on the National Register of Historic Places 	Section 106 of the National Historic Preservation Act (State Historic Preservation Officer consultation) (see page 4-101)
<ul style="list-style-type: none"> ♦ The action occurs in tideland; submerged land; the bed of a navigable river, stream, lake, bay, estuary, inlet, or strait; swamp land, or overflowed land ♦ The action would affect water-related commerce, navigation, fisheries, recreation, open space, or other public trust uses 	State Lands Commission land use lease (see page 4-107)
<ul style="list-style-type: none"> ♦ The action would affect existing state flood control project facilities, including levees, dams, reservoirs, and floodways and flood control plans 	State Reclamation Board encroachment permit (see page 4-112)

Riparian Habitat

Definition of Actions: Actions in this category involve establishing, restoring, maintaining, and protecting riparian habitat. Maintaining riparian habitat usually will involve fencing off or otherwise protecting riparian corridors or modifying land use practices near stream channels to protect riparian habitat from erosion and degradation.

Associated Categories: See also "Channel and Instream Habitat Modification" (page 3-19) for actions that involve restoring and protecting both instream and riparian habitat and "Spawning Gravel" (page 3-24) for actions that include restoring and replacing gravel, in addition to protecting riparian habitat, as part of overall stream restoration efforts (e.g. on the Merced, Tuolumne, and Stanislaus rivers). See also "Land Acquisition" (page 3-43) for actions that may include purchasing conservation easements for lands in a riparian corridor, in addition to restoring and maintaining habitat on public lands. See also "Watershed Management" (page 3-39) for actions that include implementing watershed protection measures to protect stream corridors (e.g. rehabilitating damaged areas and remedying incompatible land use practices on the Cosumnes River).

Actions Addressed under Other Categories: Actions that focus on increasing flows that will enhance riparian habitat are addressed under "Flow Management" (page 3-53). Actions that involve purchasing conservation easements to protect habitat and in-channel conditions are addressed under "Land Acquisition" (page 3-43). Actions that focus on instream habitat conditions are addressed under "Channel and Instream Habitat Modification" (page 3-19). Actions that involve restoration of riparian habitat as a component of meander belt restoration are addressed under "Meander Belts (page 3-34)."

Restoration Plan Actions: *Clear Creek* - develop an erosion control and stream corridor protection program; *Cow Creek* - fence selected riparian corridors; *Cottonwood, Mill, Deer, Big Chico, and Butte Creeks* - establish, restore, and/or maintain riparian habitat; *American River* - develop a riparian corridor management plan; *Mokelumne River* - enhance and maintain the riparian corridor; *Cosumnes River* - rehabilitate damaged areas; *Merced, Tuolumne, and Stanislaus Rivers* - restore and protect riparian habitat.

Overview

Riparian habitat plays an important ecological role by filtering runoff and reducing siltation of streambeds, protecting shorelines from erosion, helping to minimize stream sedimentation, reducing the occurrence of high water temperatures by shading shallow nearshore waters, and increasing organic input and recruitment of large woody debris to a stream.

Actions in this category involve planting and restoring riparian vegetation and protecting riparian habitat from further degradation from adjacent land use activities, including livestock grazing, and providing private landowners with incentives to enhance riparian revegetation on their lands.

Regulatory Compliance

Requirements Most Likely to Apply

Because riparian habitat actions will often occur in areas where species that are federally or state listed as threatened or endangered or that are candidates for state listing may be present, compliance with the federal Endangered Species Act (in coordination with USFWS and NOAA-Fisheries) and the California Endangered Species Act (in coordination with DFG) may be required. Separate from federal agency involvement in proposing the Restoration Plan action (which would itself require NEPA compliance), involvement of USFWS and NOAA-Fisheries may trigger the need for NEPA compliance. Because actions in this category will occur in floodplains, any actions that are considered federal agency proposals will need to comply with Executive Order 11988 (floodplain management). Unless the action is proposed by a state or local agency, CEQA compliance is not expected to be required.

The following are therefore most likely to apply to conducting riparian habitat restoration, management, and maintenance:

- ❖ NEPA
- ❖ Section 7 or 10 of the Endangered Species Act
- ❖ Executive Order 11988 (floodplain management)
- ❖ Section 2081 of California Fish and Game Code - California Endangered Species Act

Regulatory Compliance Triggers and Timing

The following table identifies the conditions that may trigger the need for environmental regulatory compliance for a specific action in this category. Only those laws, permits, and other authorizations that may apply to riparian habitat actions are listed, with the triggers for each. See Table 3 at the end of this chapter for a summary listing of permits and authorizations that pertain to each action category. Examples of permit applications are provided in Appendix B.

Because the environmental effects associated with these actions are expected to be minimal and the environmental benefits are expected to be high, the processing and issuance of these permits and requirements are not expected to receive a high level of agency scrutiny; therefore, the timeframe for receiving agency authorizations should be minimal.

Decision Analysis Table for Determining Regulatory Compliance Requirements of Riparian Habitat Actions	
Do Any of the Following Apply?	If So, Compliance Is Required with:
<ul style="list-style-type: none"> The action is considered a federal agency proposal, and environmental effects of the action are not adequately addressed in the programmatic EIS (CVPIA PEIS) or have substantially changed since completion of the PEIS 	NEPA (see page 4-6)
<ul style="list-style-type: none"> The action is located in waters of the United States, including wetlands, and/or the action is located in navigable waters of the United States, and: <ul style="list-style-type: none"> The action is considered a discharge of dredged or fill material The action would affect facilities designed, built, or managed by the Corps 	Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act (see page 4-16)
<ul style="list-style-type: none"> The action is considered a major construction activity and species listed as threatened or endangered under the federal Endangered Species Act (ESA) may be found in the project area; the action may affect the listed species (Section 7) The action may result in the "take" of a species listed as threatened or endangered under the ESA (Section 7 or 10) 	Section 7 or 10 of the Endangered Species Act /Action Specific Implementation Plan (see page 4-33)
<ul style="list-style-type: none"> The action is considered a federal agency proposal and proposes to control or modify surface water 	Fish and Wildlife Coordination Act (see page 4-41)
<ul style="list-style-type: none"> The action occurs on or requires access across federal public lands administered by the National Park Service (NPS), U.S. Forest Service (USFS), Natural Resources Conservation Service (NRCS), or Bureau of Indian Affairs (BIA) The action modifies, improves, or affects facilities designed, built, operated, maintained or otherwise managed by NPS, USFS, NRCS, or BIA The action is considered subject to regulation under the Swampbuster provision of the Food Security Act, FACTA, or the Farm Bill of 1996 (NRCS only) 	Federal agency authority (encroachment approval) from NPS, USFS, NRCS, or BIA (see pages 4-55, 4-57, 4-59, and 4-61)
<ul style="list-style-type: none"> The action is considered a federal agency proposal and affects prime or unique farmland 	Farmland Protection Policy Act (see page 4-63)
<ul style="list-style-type: none"> The action is considered a federal agency proposal and is located within or may affect a floodplain 	Executive Order 11988 - Floodplain Management (see page 4-65)
<ul style="list-style-type: none"> The action is considered a federal agency proposal and is located within or may affect wetlands 	Executive Order 11990 - Protection of Wetlands (see page 4-67)

♦ The action is considered a federal agency proposal and may affect minority or low-income populations	Executive Order 12898 - Environmental Justice in Minority and Low-Income Populations (see page 4-69)
♦ The action may affect Indian Trust Assets	Indian Trust Assets (see page 4-72)
♦ The action involves a state or local agency action and is considered a project for CEQA purposes	CEQA (see page 4-6)
♦ The action involves a federal license or permit that may affect state water quality, and the action would result in a discharge of a pollutant into waters of the United States	Section 401 of the Clean Water Act (see page 4-74)
♦ The action would result in a new or continued point-source discharge of pollutants into surface waters of the United States	National Pollutant Discharge Elimination System (see pages 4-78)
♦ The action would result in any discharge or change in discharge (non-point or point source), other than to a community sewer system, which could affect the quality of either surface or groundwater	Waste Discharge Requirements (see page 4-82)
♦ A species listed as a candidate, threatened, or endangered under the California Endangered Species Act (CESA) may be present in the project area ♦ The action may result in the "take" of a species listed under CESA (Section 2081)	Section 2081 of the California Fish and Game Code - California Endangered Species Act/Action Specific Implementation Plan (see page 4-90)
♦ The action involves any activity that will divert or obstruct the natural flow or change the bed, channel, or bank of any river, stream, or lake ♦ The action involves the use or alteration of any streambed material ♦ The action occurs within the annual high-water mark of a wash, stream, or lake	Section 1602 Streambed Alteration Agreement (see page 4-97)
♦ The action is considered a federal agency proposal and occurs in an area where properties are listed, or are eligible for listing, on the National Register of Historic Places	Section 106 of the National Historic Preservation Act (State Historic Preservation Officer consultation) (see page 4-101)
♦ The action occurs in tideland; submerged land; the bed of a navigable river, stream, lake, bay, estuary, inlet, or strait; swamp land, or overflowed land ♦ The action would affect water-related commerce, navigation, fisheries, recreation, open space, or other public trust uses	State Lands Commission land use lease (see page 4-107)
♦ The action would affect existing state flood control project facilities, including levees, dams, reservoirs, and floodways and flood control plans	State Reclamation Board encroachment permit (see page 4-112)

♦ The action would be located within the right-of-way (ROW) of state-owned roadway, including bridge alterations	California Department of Transportation encroachment permit/ROW (see page 4-121)
♦ The action would involve grading, building or modifying structures, special or conditional uses, modification or approval of general or specific plans (local or regional), and/or zoning ordinance amendment	City or county approvals and entitlements (see page 4-129)

Meander Belts

Definition of Actions: Actions in this category involve creating meander belts.

Associated Categories: None. Actions in this category include spawning gravel, channel and instream habitat modification, and riparian habitat components. The regulatory compliance requirements of these categories are combined under this category.

Actions Addressed under Other Categories: Actions focusing on restoring channel definition and structure are addressed under "Channel and Instream Habitat Modification" (page 3-19).

Restoration Plan Actions: *Upper-mainstem Sacramento River* - pursue opportunities to create a meander belt from Keswick Dam to Colusa.

Overview

Reestablishing river meander belts can lead to greater habitat diversity by providing spawning gravel; creating a variety of preferred spawning areas (e.g. point bar riffles, chute cutoffs, and areas near islands); maintaining and improving the hydrologic diversity of the river channel; reestablishing and maintaining a diversity of substrates; supplying a continually renewable source of shaded riverine aquatic habitat, including large woody debris; and providing an important terrestrial food source.

The Restoration Plan includes the reestablishment of a meander belt along the Sacramento River. This environment would provide all the previously mentioned benefits by including an unbroken band of the full continuum of river-created habitats maintained by the river over time.

Regulatory Compliance

Requirements Most Likely to Apply

Establishing meander belts will involve activities in navigable waters or waters of the United States and the discharge of fill material, triggering the need for compliance with Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act, administered by the U.S. Army Corps of Engineers (Corps).

Because meander belts will most likely be created in areas where species that are federally or state listed as threatened or endangered or that are candidates for state listing may be present, compliance with the federal Endangered Species Act (in coordination with USFWS and NOAA-Fisheries) and the California Endangered Species Act (in coordination with DFG) may be required.

Separate from federal agency involvement in proposing the Restoration Plan action (which would itself require NEPA compliance), involvement of the Corps and/or USFWS and NOAA-Fisheries may trigger

the need for NEPA compliance, and will most likely trigger the need for compliance with the Fish and Wildlife Coordination Act because actions would involve the modification of surface water.

Actions in this category will occur in or affect floodplains and wetlands, triggering the need for compliance with Executive Orders 11988 (floodplain management) and 11990 (protection of wetlands), respectively.

Because actions in this category will likely involve activities with the potential to mobilize contaminants in surface waters and require compliance with Section 404, state certification under Section 401 of the Clean Water Act will usually be required. Actions that will result in a point-source discharge into waters of the United States will require compliance with the National Pollutant Discharge Elimination System, administered by regional water quality control boards. Because actions could result in the temporary discharge of waste affecting surface water, the need for compliance with state Waste Discharge Requirements is likely. All actions in this category would involve changing a streambed or altering streambed material, triggering the need for a Section 1602 Streambed Alteration Agreement with DFG. Creation of meander belts will usually affect the beds of navigable rivers or streams and are likely to affect public trust uses, triggering the need for a State Lands Commission land use lease. Establishment of meander belts may require modification of state flood control project facilities, including levees and flood control plans, triggering the need for a State Reclamation Board encroachment permit. Requirements for state and local authorizations will trigger the need for CEQA compliance.

The following are therefore most likely to apply to meander belt creation:

- ❖ NEPA
- ❖ Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act
- ❖ Section 7 or 10 of the Endangered Species Act
- ❖ Fish and Wildlife Coordination Act
- ❖ Executive Order 11988 (floodplain management)
- ❖ Executive Order 11990 (protection of wetlands)
- ❖ CEQA
- ❖ Section 401 of the Clean Water Act
- ❖ National Pollutant Discharge Elimination System
- ❖ Waste Discharge Requirements
- ❖ Section 2081 of the California Fish and Game Code - California Endangered Species Act
- ❖ Section 1602 Streambed Alteration Agreement
- ❖ Section 106 of the National Historic Preservation Act (State Historic Preservation Officer consultation)

- ❖ State Lands Commission land use lease
- ❖ State Reclamation Board encroachment permit

Regulatory Compliance Triggers and Timing

The following table identifies the conditions that may trigger the need for environmental regulatory compliance for a specific action in this category. Only those laws, permits, and other authorizations that may apply to meander belt actions are listed, with the triggers for each. See Table 3 at the end of this chapter for a summary listing of permits and authorizations that pertain to each action category. Examples of permit applications are provided in Appendix B.

The environmental effects associated with these actions may be more than minimal; therefore, the processing and issuance of these permits may require a higher level of regulatory agency oversight for actions in this category than for those in some other categories. Because permit processing could take longer, agency contacts with the Corps and endangered species units of USFWS and NOAA-Fisheries should be started first.

Decision Analysis Table for Determining Regulatory Compliance Requirements of Meander Belt Actions	
Do Any of the Following Apply?	If So, Compliance Is Required with:
<ul style="list-style-type: none"> ♦ The action is considered a federal agency proposal, and environmental effects of the action are not adequately addressed in the programmatic EIS (CVPIA PEIS) or have substantially changed since completion of the PEIS 	NEPA (see page 4-6)
<ul style="list-style-type: none"> ♦ The action is located in waters of the United States, including wetlands, and/or the action is located in navigable waters of the United States, and: <ul style="list-style-type: none"> ♦ The action is considered a discharge of dredged or fill material ♦ The action would affect facilities designed, built, or managed by the Corps 	Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act (see page 4-16)
<ul style="list-style-type: none"> ♦ The action is considered a major construction activity and species listed as threatened or endangered under the federal Endangered Species Act (ESA) may be found in the project area; the action may affect the listed species (Section 7) ♦ The action may result in the "take" of a species listed as threatened or endangered under the ESA (Section 7 or 10) 	Section 7 or 10 of the Endangered Species Act/Action Specific Implementation Plan (see page 4-33)
<ul style="list-style-type: none"> ♦ The action is considered a federal agency proposal and proposes to control or modify surface water 	Fish and Wildlife Coordination Act (see page 4-41)

<ul style="list-style-type: none"> ♦ The action occurs on or requires access across federal public lands administered by U.S. Bureau of Land Management (BLM), National Park Service (NPS), Natural Resources Conservation Service (NRCS), or Bureau of Indian Affairs (BIA) ♦ The action modifies, improves, or affects facilities designed, built, operated, maintained or otherwise managed by BLM, NPS, NRCS, or BIA ♦ The action is considered subject to regulation under the Swampbuster provision of the Food Security Act, FACTA, or the Farm Bill of 1996 (NRCS only) 	Federal agency authority (encroachment approval) from BLM, NPS, NRCS, or BIA (see pages 4-52, 4-55, 4-59 and 4-61)
<ul style="list-style-type: none"> ♦ The action is considered a federal agency proposal and affects prime or unique farmland 	Farmland Protection Policy Act (see page 4-63)
<ul style="list-style-type: none"> ♦ The action is considered a federal agency proposal and is located within or may affect a floodplain 	Executive Order 11988 - Floodplain Management (see page 4-65)
<ul style="list-style-type: none"> ♦ The action is considered a federal agency proposal and is located within or may affect wetlands 	Executive Order 11990 - Protection of Wetlands (see page 4-67)
<ul style="list-style-type: none"> ♦ The action is considered a federal agency proposal and may affect minority or low-income populations 	Executive Order 12898 - Environmental Justice in Minority and Low-Income Populations (see page 4-69)
<ul style="list-style-type: none"> ♦ The action is considered a federal agency proposal and may affect Native American religious practices 	American Indian Religious Freedom Act of 1978 (see page 4-71)
<ul style="list-style-type: none"> ♦ The action may affect Indian Trust Assets 	Indian Trust Assets (see page 4-72)
<ul style="list-style-type: none"> ♦ The action involves a state or local agency action and is considered a project for CEQA purposes 	CEQA (see page 4-6)
<ul style="list-style-type: none"> ♦ The action involves a federal license or permit that may affect state water quality, and the action would result in a discharge of a pollutant into waters of the United States 	Section 401 of the Clean Water Act (see page 4-74)
<ul style="list-style-type: none"> ♦ The action would result in a new or continued point-source discharge of pollutants into surface waters of the United States 	National Pollutant Discharge Elimination System (see page 4-78)
<ul style="list-style-type: none"> ♦ The action would result in any discharge or change in discharge (non-point or point source), other than to a community sewer system, which could affect the quality of either surface or groundwater 	Waste Discharge Requirements (see page 4-82)
<ul style="list-style-type: none"> ♦ A species listed as a candidate, threatened, or endangered under the California Endangered Species Act (CESA) may be present in the project area ♦ The action may result in the "take" of a species listed under CESA (Section 2081) 	Section 2081 of California Fish and Game Code - California Endangered Species Act/Action Specific Implementation Plan (see page 4-90)

<ul style="list-style-type: none"> ♦ The action involves any activity that will divert or obstruct the natural flow or change the bed, channel, or bank of any river, stream, or lake ♦ The action involves the use or alteration of any streambed material ♦ The action occurs within the annual high-water mark of a wash, stream, or lake 	Section 1602 Streambed Alteration Agreement (see page 4-97)
<ul style="list-style-type: none"> ♦ The action is considered a federal agency proposal and occurs in an area where properties are listed, or are eligible for listing, on the National Register of Historic Places 	Section 106 of the National Historic Preservation Act (State Historic Preservation Officer consultation) (see page 4-101)
<ul style="list-style-type: none"> ♦ The action occurs in tideland; submerged land; the bed of a navigable river, stream, lake, bay, estuary, inlet, or strait; swamp land, or overflowed land ♦ The action would affect water-related commerce, navigation, fisheries, recreation, open space, or other public trust uses 	State Lands Commission land use lease (see page 4-107)
<ul style="list-style-type: none"> ♦ The action would affect existing state flood control project facilities, including levees, dams, reservoirs, and floodways and flood control plans 	State Reclamation Board encroachment permit (see page 4-112)
<ul style="list-style-type: none"> ♦ The action would be located within the right-of-way (ROW) of state-owned roadway, including bridge alterations 	California Department of Transportation encroachment permit/ROW (see page 4-121)
<ul style="list-style-type: none"> ♦ The action would involve grading, building or modifying structures, special or conditional uses, modification or approval of general or specific plans (local or regional), and/or zoning ordinance amendment 	City or county approvals and entitlements (see page 4-129)

Watershed Management

Definition of Actions: Actions in this category involve developing watershed management plans and strategies, developing land use plans and erosion control programs, modifying land use practices (including timber extraction and grazing) to reduce sedimentation and instream water temperatures, and facilitating watershed management and protection.

Associated Categories: See also "Channel and Instream Habitat Modification" (page 3-19) and "Riparian Habitat" (page 3-28) for actions that include restoring and protecting instream habitat and establishing and restoring riparian habitat, respectively, and see "Spawning Gravel" (page 3-24) for actions that include restoring and replenishing spawning gravel in addition to improving watershed management to restore and protect instream habitat (e.g. on the Merced, Tuolumne, and Stanislaus Rivers).

Actions Addressed under Other Categories: Actions that focus on restoration, as well as protection, of riparian habitat are addressed under "Riparian Habitat" (page 3-29). Actions that focus on acquiring lands to protect them from loss or disturbance and to preserve habitat values are addressed under "Land Acquisition" (page 3-43).

Restoration Plan Actions: *Clear Creek* - preserve the productivity of habitat through cooperative watershed management; *Cottonwood Creek* - facilitate watershed protection and restoration; *Elder Creek* - work with Tehama County to develop an erosion control ordinance; *Mill Creek* - preserve habitat productivity through cooperative watershed management; *Thomes Creek* - employ ecologically sound timber extraction and grazing practices; *Deer Creek* - develop a watershed management plan; *Big Chico Creek* - preserve habitat productivity through cooperative watershed management; *Butte Creek* - develop land use plans that create buffer zones between the creek and developments; *Mokelumne River* - prevent sedimentation of spawning gravel; *Cosumnes River* - remedy incompatible land practices to reduce sedimentation and instream water temperatures; *Merced, Tuolumne, and Stanislaus Rivers* - improve watershed management.

Overview

Various forms of land use contribute to reductions in water quality, including timber harvesting and road building in mountain watersheds, which can produce substantial siltation in downstream areas if not managed carefully; grazing along streambanks, which can lead to shoreline erosion, loss of riparian vegetation, and associated increases in water temperatures; and agricultural practices, which can increase water temperatures and introduce contaminants directly into water bodies. Better management of watershed land uses can improve water quality.

This category includes a variety of actions with conservation and restoration as a goal, such as cooperative watershed management and development of a watershed management plan, and improving holding, spawning, and rearing habitats for salmonids by facilitating watershed protection and restoration.

Regulatory Compliance

Requirements Most Likely to Apply

Because the activities related to this action category are not expected to involve structural projects, they are not expected to require environmental permits or compliance with environmental regulations.

Regulatory Compliance Triggers and Timing

The following table identifies the conditions that may trigger the need for environmental regulatory compliance for a specific action in this category. Only those laws, permits, and other authorizations that may apply to watershed management actions are listed, with the triggers for each. See Table 3 at the end of this chapter for a summary listing of permits and authorizations that pertain to each action category. Examples of permit applications are provided in Appendix B.

Decision Analysis Table for Determining Regulatory Compliance Requirements of Watershed Management Actions	
Do Any of the Following Apply?	If So, Compliance Is Required with:
<ul style="list-style-type: none"> ♦ The action is considered a federal agency proposal, and environmental effects of the action are not adequately addressed in the programmatic EIS (CVPIA PEIS) or have substantially changed since completion of the PEIS 	NEPA (see page 4-6)
<ul style="list-style-type: none"> ♦ The action is located in waters of the United States, including wetlands, and/or the action is located in navigable waters of the United States, and: <ul style="list-style-type: none"> ♦ The action is considered a discharge of dredged or fill material ♦ The action would affect facilities designed, built, or managed by the Corps 	Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act (see page 4-16)
<ul style="list-style-type: none"> ♦ The action is considered a major construction activity and species listed as threatened or endangered under the federal Endangered Species Act (ESA) may be found in the project area; the action may affect the listed species (Section 7) ♦ The action may result in the "take" of a species listed as threatened or endangered under the ESA (Section 7 or 10) 	Section 7 or 10 of the Endangered Species Act/Action Specific Implementation Plan (see page 4-33)
<ul style="list-style-type: none"> ♦ The action is considered a federal agency proposal and proposes to control or modify surface water 	Fish and Wildlife Coordination Act (see page 4-41)
<ul style="list-style-type: none"> ♦ The action is considered a federal agency proposal and affects a river within the National Wild and Scenic Rivers system 	National Wild and Scenic Rivers Act (see page 4-46)

<ul style="list-style-type: none"> ♦ The action occurs on or requires access across federal public lands administered by National Park Service (NPS), U.S. Forest Service (USFS), Natural Resources Conservation Service (NRCS), or Bureau of Indian Affairs (BIA) ♦ The action modifies, improves, or affects facilities designed, built, operated, maintained or otherwise managed by NPS, USFS, NRCS, or BIA ♦ The action is considered subject to regulation under the Swampbuster provision of the Food Security Act, FACTA, or the Farm Bill of 1996 (NRCS only) 	Federal agency authority (encroachment approval) from NPS, USFS, NRCS, or BIA (see pages 4-55, 4-57, 4-59 and 4-61)
<ul style="list-style-type: none"> ♦ The action is considered a federal agency proposal and affects prime or unique farmland 	Farmland Protection Policy Act (see page 4-63)
<ul style="list-style-type: none"> ♦ The action is considered a federal agency proposal and is located within or may affect a floodplain 	Executive Order 11988 - Floodplain Management (see page 4-65)
<ul style="list-style-type: none"> ♦ The action is considered a federal agency proposal and is located within or may affect wetlands 	Executive Order 11990 - Protection of Wetlands (see page 4-67)
<ul style="list-style-type: none"> ♦ The action is considered a federal agency proposal and may affect minority or low-income populations 	Executive Order 12898 - Environmental Justice in Minority and Low-Income Populations (see page 4-69)
<ul style="list-style-type: none"> ♦ The action is considered a federal agency proposal and may affect Native American religious practices 	American Indian Religious Freedom Act of 1978 (see page 4-71)
<ul style="list-style-type: none"> ♦ The action may affect Indian Trust Assets 	Indian Trust Assets (see page 4-72)
<ul style="list-style-type: none"> ♦ The action involves a state or local agency action and is considered a project for CEQA purposes 	CEQA (see page 4-6)
<ul style="list-style-type: none"> ♦ The action involves a federal license or permit that may affect state water quality, and the action would result in a discharge of a pollutant into waters of the United States 	Section 401 of the Clean Water Act (see page 4-74)
<ul style="list-style-type: none"> ♦ The action would result in a new or continued point-source discharge of pollutants into surface waters of the United States 	National Pollutant Discharge Elimination System (see page 4-78)
<ul style="list-style-type: none"> ♦ The action would result in any discharge or change in discharge (non-point or point source), other than to a community sewer system, which could affect the quality of either surface or groundwater 	Waste Discharge Requirements (see page 4-82)
<ul style="list-style-type: none"> ♦ A species listed as a candidate, threatened, or endangered under the California Endangered Species Act (CESA) may be present in the project area ♦ The action may result in the "take" of a species listed under CESA (Section 2081) 	Section 2081 of the California Fish and Game Code - California Endangered Species Act/Action Specific Implementation Plan (see page 4-90)

<ul style="list-style-type: none"> ♦ The action involves any activity that will divert or obstruct the natural flow or change the bed, channel, or bank of any river, stream, or lake ♦ The action involves the use or alteration of any streambed material ♦ The action occurs within the annual high-water mark of a wash, stream, or lake 	Section 1602 Streambed Alteration Agreement (see page 4-97)
<ul style="list-style-type: none"> ♦ The action is considered a federal agency proposal and occurs in an area where properties are listed, or are eligible for listing, on the National Register of Historic Places 	Section 106 of the National Historic Preservation Act (State Historic Preservation Officer consultation) (see page 4-101)
<ul style="list-style-type: none"> ♦ The action occurs in tideland; submerged land; the bed of a navigable river, stream, lake, bay, estuary, inlet, or strait; swamp land, or overflowed land ♦ The action would affect water-related commerce, navigation, fisheries, recreation, open space, or other public trust uses 	State Lands Commission land use lease (see page 4-107)
<ul style="list-style-type: none"> ♦ The action would affect existing state flood control project facilities, including levees, dams, reservoirs, and floodways and flood control plans 	State Reclamation Board encroachment permit (see page 4-112)
<ul style="list-style-type: none"> ♦ The action involves construction, modification, or enlargement of a dam or reservoir ♦ The action involves the repair or alteration of an existing dam or reservoir 	Approval of plans and specifications to construct or enlarge a dam or reservoir and certificate of approval to store water and to repair or alter a dam or reservoir (see page 4-117)
<ul style="list-style-type: none"> ♦ The action would be located within the right-of-way (ROW) of state-owned roadway, including bridge alterations 	California Department of Transportation encroachment permit/ROW (see page 4-121)

Land Acquisition

Definition of Actions: Actions in this category involve obtaining titles or conservation easements from willing sellers to protect anadromous fish habitat adjacent to these lands.

Actions Addressed under Other Categories: Actions that focus on coordinating with existing property owners to improve riparian habitat and watershed management are addressed under "Riparian Habitat" (page 3-29) and "Watershed Management" (page 3-39), respectively.

Restoration Plan Actions: *Big Chico Creek* - obtain titles or conservation easements for lands adjacent to summer holding pools for salmon; *Yuba River* - purchase streambank conservation easements to improve habitat and instream cover.

Overview

Land uses in riparian areas in and surrounding fish habitat may have deleterious effects on fish populations. The Restoration Plan includes actions to modify, reduce, or eliminate these land uses. Obtaining title in fee would eliminate land uses affecting fish populations; if the seller were willing to transfer partial title to restrict certain land uses (i.e. conservation easements), certain uses may be allowed to continue if compatible with species protection.

Regulatory Compliance

Requirements Most Likely to Apply

Because obtaining conservation easements for protection of anadromous fish habitat will involve lands in floodplains, any actions in this category that are considered federal agency proposals will need to comply with Executive Order 11988 (floodplain management). The following is therefore most likely to apply to land acquisition:

- ❖ Executive Order 11988 - Floodplain Management

Regulatory Compliance Triggers and Timing

The following table identifies the conditions that may trigger the need for environmental regulatory compliance for a specific action in this category. Only those laws, permits, and other authorizations that may apply to land acquisition actions are listed, with the triggers for each. See Table 3 at the end of this chapter for a summary listing of permits and authorizations that pertain to each action category. Examples of permit applications are provided in Appendix B.

Because the activities related to this action category are not expected to involve structural projects, most are not expected to require environmental permits or compliance with environmental regulations.

Decision Analysis Table for Determining Regulatory Compliance Requirements of Land Acquisition Actions	
Do Any of the Following Apply?	If So, Compliance Is Required with:
<ul style="list-style-type: none"> The action is considered a federal agency proposal, and environmental effects of the action are not adequately addressed in the programmatic EIS (CVPIA PEIS) or have substantially changed since completion of the PEIS 	NEPA (see page 4-6)
<ul style="list-style-type: none"> The action is considered a major construction activity and species listed as threatened or endangered under the federal Endangered Species Act (ESA) may be found in the project area; the action may affect the listed species (Section 7) The action may result in the "take" of a species listed as threatened or endangered under the ESA (Section 7 or 10) 	Section 7 or 10 of the Endangered Species Act/Action Specific Implementation Plan (see page 4-33)
<ul style="list-style-type: none"> The action is considered a federal agency proposal and affects prime or unique farmland 	Farmland Protection Policy Act (see page 4-63)
<ul style="list-style-type: none"> The action is considered a federal agency proposal and is located within or may affect a floodplain 	Executive Order 11988 - Floodplain Management (see page 4-65)
<ul style="list-style-type: none"> The action is considered a federal agency proposal and is located within or may affect wetlands 	Executive Order 11990 - Protection of Wetlands (see page 4-67)
<ul style="list-style-type: none"> The action is considered a federal agency proposal and may affect minority or low-income populations 	Executive Order 12898 - Environmental Justice in Minority and Low-Income Populations (see page 4-69)
<ul style="list-style-type: none"> The action is considered a federal agency proposal and may affect Native American religious practices 	American Indian Religious Freedom Act of 1978 (see page 4-71)
<ul style="list-style-type: none"> The action may affect Indian Trust Assets 	Indian Trust Assets (see page 4-72)
<ul style="list-style-type: none"> The action involves a state or local agency action and is considered a project for CEQA purposes 	CEQA (see page 4-6)
<ul style="list-style-type: none"> A species listed as a candidate, threatened, or endangered under the California Endangered Species Act (CESA) may be present in the project area The action may result in the "take" of a species listed under CESA (Section 2081) 	Section 2081 of the California Fish and Game Code - California Endangered Species Act/Action Specific Implementation Plan (see page 4-90)

Water Quality

Definition of Actions: Actions in this category involve eliminating toxic discharges and reducing toxic chemical and trace element contamination, remediating water quality problems from past practices, establishing water quality standards, removing sediment, removing chemical barriers to fish migration, and maintaining specified water quality standards.

Associated Categories: See also "Passage" (page 3-8) for actions that include removing or modifying physical barriers, as well as chemical barriers, impeding fish migration (e.g. on the Bear River). See also "Fish Screens" (page 3-3) for actions that include improving fish screens and "Facilities Management" (page 3-58) for actions that include modifying operations of water diversion or storage facilities to improve fish survival (e.g. at Anderson-Cottonwood Irrigation District [ACID] diversion facility).

Actions Addressed under Other Categories: Actions that focus on flow management for water quality improvement are addressed under "Flow Management" (page 3-53). Such actions that include water acquisition to augment stream flow are addressed under "Water Acquisition" (page 3-63). Actions that focus on instream temperature modification are addressed under "Temperature Management" (page 3-49). Actions that focus on erosion control and modifying land uses to protect instream water quality are addressed under "Watershed Management" (page 3-39).

Restoration Plan Actions: *Upper-mainstem Sacramento River* - remedy water quality problems from toxic discharges associated with Iron Mountain Mine and metal sludges in Keswick Reservoir, eliminate toxic discharges from the canal at the ACID Diversion Dam; *Clear Creek* - remove sediment from behind McCormick-Saeltzer Dam; *Bear River* - negotiate removal or modification of chemical barriers impeding anadromous fish migration; *Mokelumne River* - establish water quality standards; *Mainstem San Joaquin River* - maintain the 6-mg/L dissolved oxygen standard during September and December between Turner Cut and Stockton; *Central Valley-wide* - reduce toxic chemical and trace element contamination.

Overview

Water quality can be degraded by a number of causes, including urban, industrial, and agricultural runoff. Restoration Plan actions address water quality concerns from a variety of sources: toxic discharge from current and historical mining operations, improper application of herbicides to canal waters, and industrial discharge. These pollutants limit aquatic habitat, primarily for sensitive aquatic species. Toxic discharges from Iron Mountain Mine have produced major kills of salmon and steelhead, as well as sublethal exposures that cause injury to anadromous fish by reducing growth and interfering with migratory behavior. Discharges from ACID Diversion Dam and Camanche Reservoir have also caused fish kills through the release of water containing herbicides and low dissolved oxygen, elevated hydrogen sulfide, and elevated heavy metal levels at critical times of the year for fisheries.

Water quality remediation projects could include developing a water quality monitoring program to determine water quality conditions and their effects on fishes, operating Camanche Reservoir so the U.S. Environmental Protection Agency (EPA) water quality standards for protecting and maintaining aquatic resources are met, remediating toxic discharges from Iron Mountain Mine, containing contaminated water

at ACID Diversion Dam, and altering operations in the mainstem San Joaquin River that affect its water quality.

Regulatory Compliance

Requirements Most Likely to Apply

Because the activities related to this action category are not expected to involve structural projects, most are not expected to require environmental permits or compliance with environmental regulations.

Regulatory Compliance Triggers and Timing

The following table identifies the conditions that may trigger the need for environmental regulatory compliance for a specific action in this category. Only those laws, permits, and other authorizations that may apply to water quality actions are listed, with the triggers for each. See Table 3 at the end of this chapter for a summary listing of permits and authorizations that pertain to each action category. Examples of permit applications are provided in Appendix B.

Decision Analysis Table for Determining Regulatory Compliance Requirements of Water Quality Actions	
Do Any of the Following Apply?	If So, Compliance Is Required with:
<ul style="list-style-type: none"> ♦ The action is considered a federal agency proposal, and environmental effects of the action are not adequately addressed in the programmatic EIS (CVPIA PEIS) or have substantially changed since completion of the PEIS 	NEPA (see page 4-6)
<ul style="list-style-type: none"> ♦ The action is located in waters of the United States, including wetlands, and/or the action is located in navigable waters of the United States, and: ♦ The action is considered a discharge of dredged or fill material ♦ The action would affect facilities designed, built, or managed by the Corps 	Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act (see page 4-16)
<ul style="list-style-type: none"> ♦ The action is considered a major construction activity and species listed as threatened or endangered under the federal Endangered Species Act (ESA) may be found in the project area; the action may affect the listed species (Section 7) ♦ The action may result in the "take" of a species listed as threatened or endangered under the ESA (Section 7 or 10) 	Section 7 or 10 of the Endangered Species Act/Action Specific Implementation Plan (see page 4-33)
<ul style="list-style-type: none"> ♦ The action is considered a federal agency proposal and proposes to control or modify surface water 	Fish and Wildlife Coordination Act (see page 4-41)

<ul style="list-style-type: none"> ♦ The action occurs on or requires access across federal public lands administered by Natural Resources Conservation Service (NRCS) ♦ The action modifies, improves, or affects facilities designed, built, operated, maintained or otherwise managed by NRCS ♦ The action is considered subject to regulation under the Swampbuster provision of the Food Security Act, FACTA, or the Farm Bill of 1996 	Federal agency authority (encroachment approval) from NRCS (see page 4-59)
<ul style="list-style-type: none"> ♦ The action is considered a federal agency proposal and affects prime or unique farmland 	Farmland Protection Policy Act (see page 4-63)
<ul style="list-style-type: none"> ♦ The action is considered a federal agency proposal and is located within or may affect wetlands 	Executive Order 11990 - Protection of Wetlands (see page 4-67)
<ul style="list-style-type: none"> ♦ The action is considered a federal agency proposal and may affect minority or low-income populations 	Executive Order 12898 - Environmental Justice in Minority and Low-Income Populations (see page 4-69)
<ul style="list-style-type: none"> ♦ The action may affect Indian Trust Assets 	Indian Trust Assets (see page 4-71)
<ul style="list-style-type: none"> ♦ The action involves a state or local agency action and is considered a project for CEQA purposes 	CEQA (see page 4-6)
<ul style="list-style-type: none"> ♦ The action involves a federal license or permit that may affect state water quality, and the action would result in a discharge of a pollutant into waters of the United States 	Section 401 of the Clean Water Act (see page 4-74)
<ul style="list-style-type: none"> ♦ The action would result in a new or continued point-source discharge of pollutants into surface waters of the United States 	National Pollutant Discharge Elimination System (see page 4-78)
<ul style="list-style-type: none"> ♦ The action would result in any discharge or change in discharge (non-point or point source), other than to a community sewer system, which could affect the quality of either surface or groundwater 	Waste Discharge Requirements (see page 4-82)
<ul style="list-style-type: none"> ♦ The action requires the diversion of water not authorized under an existing water right ♦ The action includes purchase or transfer of water ♦ The action includes a change in use or change in point of diversion of water under an existing water right ♦ The action includes storing more than 10 acre-feet of water for more than 30 days ♦ The action requires appropriation of water for use on non-riparian land 	Water rights (see pages 4-85)
<ul style="list-style-type: none"> ♦ A species listed as a candidate, threatened, or endangered under the California Endangered Species Act (CESA) may be present in the project area ♦ The action may result in the "take" of a species listed under CESA (Section 2081) 	Section 2081 of the California Fish and Game Code - California Endangered Species Act/Action Specific Implementation Plan (see page 4-90)

<ul style="list-style-type: none"> ♦ The action involves any activity that will divert or obstruct the natural flow or change the bed, channel, or bank of any river, stream, or lake ♦ The action involves the use or alteration of any streambed material ♦ The action occurs within the annual high-water mark of a wash, stream, or lake 	Section 1602 Streambed Alteration Agreement (see page 4-97)
<ul style="list-style-type: none"> ♦ The action is considered a federal agency proposal and occurs in an area where properties are listed, or are eligible for listing, on the National Register of Historic Places 	Section 106 of the National Historic Preservation Act (State Historic Preservation Officer consultation) (see page 4-101)
<ul style="list-style-type: none"> ♦ The action occurs in tideland; submerged land; the bed of a navigable river, stream, lake, bay, estuary, inlet, or strait; swamp land, or overflowed land ♦ The action would affect water-related commerce, navigation, fisheries, recreation, open space, or other public trust uses 	State Lands Commission land use lease (see page 4-107)
<ul style="list-style-type: none"> ♦ The action involves construction, modification, or enlargement of a dam or reservoir ♦ The action involves the repair or alteration of an existing dam or reservoir 	Approval of plans and specifications to construct or enlarge a dam or reservoir and certificate of approval to store water and to repair or alter a dam or reservoir (see page 4-117)

Temperature Management

Definition of Actions: Actions in this category focus on maintaining instream water temperatures at specified levels.

Associated Categories: See also "Facilities Management" (page 3-58) for actions that involve modifying facilities operations (e.g. operation of reservoirs) to regulate river temperatures (e.g. maintaining water temperatures at a specified level on the upper mainstem Sacramento River, providing flows of suitable temperatures on the Calaveras River).

Actions Addressed under Other Categories: Actions that focus on managing or supplementing flows to improve habitat conditions in general for species of anadromous fish are addressed under "Flow Management" (page 3-53). Such actions that involve water acquisitions are addressed under "Water Acquisitions" (page 3-63).

Restoration Plan Actions: *Upper-mainstem Sacramento River* - continue to maintain temperatures at or below 56 from Keswick Dam to Bend Bridge; *Feather River* - develop and utilize a temperature model as a tool for river management; *Bear River* - provide adequate water temperatures for all life stages of Chinook salmon and steelhead; *Mokelumne River* - maintain suitable water temperatures for all salmonid life stages; *Calaveras River* - provide flows of suitable water temperatures for all salmonid life stages.

Overview

Successful spawning, incubation, rearing, and outmigration requires a narrow range of water temperatures. In many of these reaches, flows are determined by releases from storage reservoirs and irrigation or hydropower diversions, and in some locations, controlled flows below reservoirs can lead to high water temperatures downstream in summer or fall that decrease survival of eggs, fry, or even adult salmon.

Actions in this category would be designed to attempt to alleviate the most severe problems in the Central Valley. A priority action site is the upper mainstem Sacramento River below Keswick Dam, where water temperatures in summer can be sufficiently high (above 56°F) to jeopardize survival of eggs of winter-run Chinook salmon. CVPIA Section 3406(b)(6) allocates funds for the Shasta Dam temperature control device. By providing temperature control at reservoirs through the use of multi-level structures, it is possible to increase annual salmonid production by decreasing juvenile thermal stress and increasing early fall reproductive and incubation success. Other projects require the modification of the CVP and other reservoir operations, and acquisition of other sources of water to help control water temperatures.

Regulatory Compliance

Requirements Most Likely to Apply

Because the activities related to this action category are not expected to involve structural projects, most are not expected to require environmental permits or compliance with environmental regulations.

Regulatory Compliance Triggers and Timing

The following table identifies the conditions that may trigger the need for environmental regulatory compliance for a specific action in this category. Only those laws, permits, and other authorizations that may apply to temperature management actions are listed, with the triggers for each. See Table 3 at the end of this chapter for a summary listing of permits and authorizations that pertain to each action category. Examples of permit applications are provided in Appendix B.

Decision Analysis Table for Determining Regulatory Compliance Requirements of Temperature Management Actions	
Do Any of the Following Apply?	If So, Compliance Is Required with:
<ul style="list-style-type: none"> The action is considered a federal agency proposal, and environmental effects of the action are not adequately addressed in the programmatic EIS (CVPIA PEIS) or have substantially changed since completion of the PEIS 	NEPA (see page 4-6)
<ul style="list-style-type: none"> The action is located in waters of the United States, including wetlands, and/or the action is located in navigable waters of the United States, and: The action is considered a discharge of dredged or fill material The action would affect facilities designed, built, or managed by the Corps 	Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act (see page 4-16)
<ul style="list-style-type: none"> The action is considered a major construction activity and species listed as threatened or endangered under the federal Endangered Species Act (ESA) may be found in the project area; the action may affect the listed species (Section 7) The action may result in the "take" of a species listed as threatened or endangered under the ESA (Section 7 or 10) 	Section 7 or 10 of the Endangered Species Act/Action Specific Implementation Plan (see page 4-33)
<ul style="list-style-type: none"> The action is considered a federal agency proposal and proposes to control or modify surface water 	Fish and Wildlife Coordination Act (see page 4-41)

<ul style="list-style-type: none"> ♦ The action occurs on or requires access across federal public lands administered by Natural Resources Conservation Service (NRCS) ♦ The action modifies, improves, or affects facilities designed, built, operated, maintained or otherwise managed by NRCS ♦ The action is considered subject to regulation under the Swampbuster provision of the Food Security Act, FACTA, or the Farm Bill of 1996 (NRCS only) 	Federal agency authority (encroachment approval) from NRCS (see page 4-59)
<ul style="list-style-type: none"> ♦ The action is considered a federal agency proposal and affects prime or unique farmland 	Farmland Protection Policy Act (see page 4-63)
<ul style="list-style-type: none"> ♦ The action is considered a federal agency proposal and is located within or may affect a floodplain 	Executive Order 11988 - Floodplain Management (see page 4-65)
<ul style="list-style-type: none"> ♦ The action is considered a federal agency proposal and is located within or may affect wetlands 	Executive Order 11990 - Protection of Wetlands (see page 4-67)
<ul style="list-style-type: none"> ♦ The action is considered a federal agency proposal and may affect minority or low-income populations 	Executive Order 12898 - Environmental Justice in Minority and Low-Income Populations (see page 4-69)
<ul style="list-style-type: none"> ♦ The action is considered a federal agency proposal and may affect Native American religious practices 	American Indian Religious Freedom Act of 1978 (see page 4-71)
<ul style="list-style-type: none"> ♦ The action may affect Indian Trust Assets 	Indian Trust Assets (see pages 4-60 through 4-72)
<ul style="list-style-type: none"> ♦ The action involves a state or local agency action and is considered a project for CEQA purposes 	CEQA (see page 4-6)
<ul style="list-style-type: none"> ♦ The action involves a federal license or permit that may affect state water quality, and the action would result in a discharge of a pollutant into waters of the United States 	Section 401 of the Clean Water Act (see page 4-74)
<ul style="list-style-type: none"> ♦ The action would result in a new or continued point-source discharge of pollutants into surface waters of the United States 	National Pollutant Discharge Elimination System (see page 4-78)
<ul style="list-style-type: none"> ♦ The action would result in any discharge or change in discharge (non-point or point source), other than to a community sewer system, which could affect the quality of either surface or groundwater 	Waste Discharge Requirements (see page 4-82)
<ul style="list-style-type: none"> ♦ The action requires the diversion of water not authorized under an existing water right ♦ The action includes purchase or transfer of water ♦ The action includes a change in use or change in point of diversion of water under an existing water right ♦ The action includes storing more than 10 acre-feet of water for more than 30 days ♦ The action requires appropriation of water for use on non-riparian land 	Water rights (see page 4-85)

<ul style="list-style-type: none"> ♦ A species listed as a candidate, threatened, or endangered under the California Endangered Species Act (CESA) may be present in the project area ♦ The action may result in the "take" of a species listed under CESA (Section 2081) 	<p>Section 2081 of the California Fish and Game Code - California Endangered Species Act/Action Specific Implementation Plan (see page 4-90)</p>
<ul style="list-style-type: none"> ♦ The action involves any activity that will divert or obstruct the natural flow or change the bed, channel, or bank of any river, stream, or lake ♦ The action involves the use or alteration of any streambed material ♦ The action occurs within the annual high-water mark of a wash, stream, or lake 	<p>Section 1602 Streambed Alteration Agreement (see page 4-97)</p>
<ul style="list-style-type: none"> ♦ The action is considered a federal agency proposal and occurs in an area where properties are listed, or are eligible for listing, on the National Register of Historic Places 	<p>Section 106 of the National Historic Preservation Act (State Historic Preservation Officer consultation) (see page 4-101)</p>
<ul style="list-style-type: none"> ♦ The action occurs in tideland; submerged land; the bed of a navigable river, stream, lake, bay, estuary, inlet, or strait; swamp land, or overflowed land ♦ The action would affect water-related commerce, navigation, fisheries, recreation, open space, or other public trust uses 	<p>State Lands Commission land use lease (see page 4-107)</p>
<ul style="list-style-type: none"> ♦ The action involves construction, modification, or enlargement of a dam or reservoir ♦ The action involves the repair or alteration of an existing dam or reservoir 	<p>Approval of plans and specifications to construct or enlarge a dam or reservoir and certificate of approval to store water and to repair or alter a dam or reservoir (see page 4-117)</p>

Flow Management

Definition of Actions: Actions in this category involve implementing river flow regulation plans and flow schedules that protect anadromous fish habitat and prevent stranding of anadromous juvenile salmonids, maintaining specified instream flows, improving flows on specified rivers, controlling flow fluctuations, modifying the timing and rate of diversions to reduce entrainment of juveniles, stopping attraction flows that result in stranding of fish, developing basin plans to meet outflow:export objectives, and maintaining specified Delta inflows and export:inflow ratios.

Associated Categories: See also "Water Acquisitions" (page 3-63) for actions that include acquiring water or water rights from willing sellers to supplement instream flows. See also "Facilities Management" (page 3-58) for actions that include modifying operation of facilities (e.g. CVP facilities on the Sacramento, American, and Stanislaus rivers). See also "Fish Screens" (page 3-3) for actions that may include constructing barriers, in addition to stopping attraction flows, to prevent fish stranding.

Actions Addressed under Other Categories: Actions that focus on temperature management that may be achieved through modification of instream flows are addressed under "Temperature Management" (page 3-49). Actions that focus on releasing water from storage facilities for habitat and temperature maintenance are addressed under "Facilities Management" (page 3-58). Actions that focus on allocation of water among water right holders are addressed under "Water Allocation and Water Rights Adjudication" (page 3-67).

Restoration Plan Actions: *Upper-mainstem Sacramento River* - implement a river flow regulation plan; *Cottonwood Creek* - eliminate stranding by stopping attraction flows in Crowley Gulch; *Mill Creek* - continue to provide instream flows in the valley reach; *American River* - develop and implement a river regulation plan, modify the timing and rate of diversions, increase flows for American shad; *Tuolumne River* - implement a flow schedule as specified in the terms of the pending FERC order; *Stanislaus River* - implement an interim river regulation plan; *Mainstem San Joaquin River* - coordinate with DFG and others to implement a flow schedule that improves conditions for Chinook salmon, develop a San Joaquin Basin plan that will meet specified outflow-export objectives; *Sacramento-San Joaquin Delta* - maintain the specified export-to-inflow ratio, increase the number of days when X2 is required at Chipps Island, maintain specified flows in the Sacramento River at I Street and Knights Landing, continue to provide specified levels of San Joaquin River inflow at Vernalis and combined State Water Project (SWP) and Central Valley Project (CVP) exports.

Overview

Modifying flow regimes may be necessary on some streams to enhance survival, growth, reproduction, and migration of anadromous species. The upper reaches of the Sacramento River and its tributaries and the Stanislaus, Tuolumne, and Merced Rivers are important spawning and nursery areas for salmon and steelhead, and flows in many of the river reaches are usually determined by releases from storage reservoirs. Flow reduction during months when a large portion of a population's egg production is incubating can result in significant fish losses because of dewatering. Also, the Sacramento-San Joaquin Delta must be traversed by migrating salmonids, and high Delta export-inflow ratios can be hazardous for juveniles and smolts.

In addition to augmenting instream flows by modifying operations of CVP and/or SWP facilities (addressed under "Facilities Management") and acquiring water rights (addressed under "Water Acquisitions"), flows can be enhanced using Section 3406(b)(2) water and through modification of the timing and duration of diversions, sometimes in combination with water conservation and water banking. Goals of flow management include attempting to satisfy the water needs for anadromous fish spawning, egg incubation, rearing, and outmigration; managing water temperature; restoring gravels; conducting spring flushing flows; maintaining channel integrity; providing sufficient flows through fish bypasses; and providing for a healthy riparian vegetative community through sustained flows at or near bankfull discharge, or even overbank flows, during the period of seed setting and vegetation growth in spring.

Regulatory Compliance

Requirements Most Likely to Apply

According to the CVPIA PEIS, actions implemented under certain provisions of the CVPIA could be undertaken without project-specific environmental documentation (EA or EIS) because these provisions were considered and sufficiently analyzed in the PEIS. Table VI-1 of the PEIS indicates that no additional NEPA documentation would be required for actions undertaken under Sections 3406(b)(8), 3406(b)(9), 3406(b)(19), and 3406(d)(1) and that additional documentation may not be required for actions undertaken under Section 3406(b)(2).

The Restoration Plan indicates that the following Delta flow management action would be implemented under Section 3406(b)(2); this action therefore could likely be undertaken without further environmental documentation:

Increase the level of protection targeted by the May and June X2 requirements to a 1962 level of development.

Because the activities related to this action category are not expected to involve structural projects, most are not expected to require environmental permits or compliance with environmental regulations.

Regulatory Compliance Triggers and Timing

The following table identifies the conditions that may trigger the need for environmental regulatory compliance for a specific action in this category. Only those laws, permits, and other authorizations that may apply to flow management actions are listed, with the triggers for each. See Table 3 at the end of this chapter for a summary listing of permits and authorizations that pertain to each action category. Examples of permit applications are provided in Appendix B.

Decision Analysis Table for Determining Regulatory Compliance Requirements of Flow Management Actions	
Do Any of the Following Apply?	If So, Compliance Is Required with:
<ul style="list-style-type: none"> The action is considered a federal agency proposal, and environmental effects of the action are not adequately addressed in the programmatic EIS (CVPIA PEIS) or have substantially changed since completion of the PEIS 	NEPA (see page 4-6)
<ul style="list-style-type: none"> The action is located in waters of the United States, including wetlands, and/or the action is located in navigable waters of the United States, and: <ul style="list-style-type: none"> The action is considered a discharge of dredged or fill material The action would affect facilities designed, built, or managed by the Corps 	Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act (see page 4-16)
<ul style="list-style-type: none"> The action is considered a major construction activity and species listed as threatened or endangered under the federal Endangered Species Act (ESA) may be found in the project area; the action may affect the listed species (Section 7) The action may result in the "take" of a species listed as threatened or endangered under the ESA (Section 7 or 10) 	Section 7 or 10 of the Endangered Species Act/Action Specific Implementation Plan (see page 4-33)
<ul style="list-style-type: none"> The action is considered a federal agency proposal and proposes to control or modify surface water 	Fish and Wildlife Coordination Act (see page 4-41)
<ul style="list-style-type: none"> The action is considered a federal agency proposal and affects a river within the National Wild and Scenic Rivers system 	National Wild and Scenic Rivers Act (see page 4-46)
<ul style="list-style-type: none"> The action occurs on or requires access across federal public lands administered by the National Park Service (NPS), U.S. Forest Service (USFS), or Natural Resources Conservation Service (NRCS) The action modifies, improves, or affects facilities designed, built, operated, maintained or otherwise managed by NPS, USFS, or NRCS The action is considered subject to regulation under the Swampbuster provision of the Food Security Act, FACTA, or the Farm Bill of 1996 (NRCS only) 	Federal agency authority (encroachment approval) from NPS, USFS, or NRCS (see pages 4-55, 4-57 and 4-59)
<ul style="list-style-type: none"> The action is considered a federal agency proposal and affects prime or unique farmland 	Farmland Protection Policy Act (see page 4-63)
<ul style="list-style-type: none"> The action is considered a federal agency proposal and is located within or may affect a floodplain 	Executive Order 11988 - Floodplain Management (see page 4-65)

♦ The action is considered a federal agency proposal and may affect minority or low-income populations	Executive Order 12898 – Environmental Justice in Minority and Low-Income Populations (see page 4-69)
♦ The action is considered a federal agency proposal and may affect Native American religious practices	American Indian Religious Freedom Act of 1978 (see page 4-71)
♦ The action may affect Indian Trust Assets	Indian Trust Assets (see pages 4-72)
♦ The action involves a state or local agency action and is considered a project for CEQA purposes	CEQA (see page 4-6)
♦ The action involves a federal license or permit that may affect state water quality, and the action would result in a discharge of a pollutant into waters of the United States	Section 401 of the Clean Water Act (see page 4-74)
♦ The action would result in a new or continued point-source discharge of pollutants into surface waters of the United States	National Pollutant Discharge Elimination System (see page 4-78)
♦ The action would result in any discharge or change in discharge (non-point or point source), other than to a community sewer system, which could affect the quality of either surface or groundwater	Waste Discharge Requirements (see page 4-82)
♦ The action requires the diversion of water not authorized under an existing water right ♦ The action includes purchase or transfer of water ♦ The action includes a change in use or change in point of diversion of water under an existing water right ♦ The action includes storing more than 10 acre-feet of water for more than 30 days ♦ The action requires appropriation of water for use on non-riparian land	Water rights (see page 4-85)
♦ A species listed as a candidate, threatened, or endangered under the California Endangered Species Act (CESA) may be present in the project area ♦ The action may result in the "take" of a species listed under CESA (Section 2081)	Section 2081 of the California Fish and Game Code – California Endangered Species Act/Action Specific Implementation Plan (see page 4-90)
♦ The action involves any activity that will divert or obstruct the natural flow or change the bed, channel, or bank of any river, stream, or lake ♦ The action involves the use or alteration of any streambed material ♦ The action occurs within the annual high-water mark of a wash, stream, or lake	Section 1602 Streambed Alteration Agreement (see page 4-97)

<ul style="list-style-type: none">♦ The action is considered a federal agency proposal and occurs in an area where properties are listed, or are eligible for listing, on the National Register of Historic Places	Section 106 of the National Historic Preservation Act (State Historic Preservation Officer consultation) (see page 4-101)
<ul style="list-style-type: none">♦ The action occurs in tideland; submerged land; the bed of a navigable river, stream, lake, bay, estuary, inlet, or strait; swamp land, or overflowed land♦ The action would affect water-related commerce, navigation, fisheries, recreation, open space, or other public trust uses	State Lands Commission land use lease (see page 4-107)

Facilities Management

Definition of Actions: Actions in this category involve modifying operations of water diversion and storage facilities and the use of seasonal diversion structures to reduce entrainment, control instream temperatures, enhance or maintain instream flows, control the sediment content of releases, maintain specified Delta inflow-export ratios, and eliminate fish passage and stranding problems.

Associated Categories: See also "Fish Screens" (page 3-3) for actions that combine structural and operational modifications to diversion facilities to minimize entrainment (e.g. at the Glen-Colusa Irrigation District [GCID] and Anderson Cottonwood Irrigation District [ACID] diversion facilities). See also "Flow Management" (page 3-53) for actions that include providing or maintaining specified instream flows by means other than modifying operation of facilities (e.g. on the Stanislaus River). See also "Water Acquisitions" (page 3-63) for such actions that include acquiring water for instream flows through purchase or negotiation. See also "Water Quality" (page 3-45) for actions that include addressing water quality, as well as implementing operational modifications to increase fish survival. See also "Spawning Gravel" (page 3-24) for actions that combine cleaning or restoring gravel with reducing sedimentation by modifying reservoir operations. See also "Passage" (page 3-8) for actions that include modifying fish ladders, as well as maintaining appropriate flows through facility management, to facilitate fish passage (e.g. at Daguerre Point Dam on the Yuba River).

Actions Addressed under Other Categories: Actions that focus on maintaining instream flows by means other than facilities management are addressed under "Flow Management" (page 3-53) or are addressed under "Water Acquisitions" (page 3-63) when emphasis is on purchasing or negotiating acquisition of water. Actions that focus on managing instream temperatures by unspecified or various means are addressed under "Temperature Management" (page 3-49). Actions that focus on moving diversion facilities (pumps) are addressed under "Relocation of Diversions" (page 3-14).

Restoration Plan Actions: *Upper-mainstem Sacramento River* - implement a river flow regulation plan that balances carryover storage needs with instream flow needs, implement a flow schedule that avoids dewatering redds or stranding juvenile salmonids, continue to maintain water temperatures at specified level below Keswick Dam, continue to raise the RBDD gates during specified periods to protect migration, implement operational modifications to the GCID and ACID water diversion facilities; *Clear Creek* - release specified flows from Whiskeytown Dam; *Thomes Creek* - reduce use of seasonal diversion dams that may be barriers to migrating fish; *Butte Creek* - maintain instream flow below Centerville Diversion Dam; *Feather River* - improve flows for American shad; *Yuba River* - improve flows for American shad, maintain adequate instream flows for temperature control, reduce and control flow fluctuations, maintain flows through Daguerre Point Dam fish ladders, operate reservoirs to provide adequate water temperatures for anadromous fish; *American River* - modify CVP operations as part of a river regulation plan and to increase flows for American shad, control flow fluctuations (attributable to CVP operations), reconfigure Folsom Dam shutters for better temperature control of releases; *Mokelumne River* - prevent sedimentation of spawning gravel (Camanche Dam), reduce effects of rapid flow fluctuations; *Calaveras River* - provide flows of suitable water temperature (New Hogan Dam); *Tuolumne River* - implement a flow schedule; *Stanislaus River* - reoperate New Melones Dam as part of an interim river regulation plan; *Sacramento-San Joaquin Delta* - close the DCC during specified periods, operate state and federal pumps interchangeably for anadromous fish protection, maintain specified export:inflow

ratios, maintain San Joaquin River flow for transport of striped bass eggs and larvae and young anadromous fish, maintain San Joaquin River inflow at Vernalis in May.

Overview

Facilities management refers to altering the management of diversion dams, the Delta Cross Channel (DCC), the barrier at the head of Old River, and the state and federal pumps in the Delta to reduce anadromous fish migration problems. Red Bluff Diversion Dam, ACID facilities, and seasonal diversion dams on Thomes Creek in Paskenta and Henleyville and the aforementioned Delta facilities have all been either found or suspected to cause difficulties to migrating anadromous fish. With diversion dams, the migration difficulties are caused by the facility acting as a barrier to the spawning habitat. The Delta facilities can pose migratory difficulties because the fish may be disoriented by flow conditions created by the CVP and State Water Project (SWP) pumping plants, and the DCC, Old River, and Georgiana Slough flow divisions. Operational changes include a variety of actions, such as finding an alternative to opening dam gates at Red Bluff Diversion Dam, investigating solutions to excessive releases from ACID canal to waste gates that attract adults into wasteways where they are stranded when the gates are shut, keeping the diversion dams out of Thomes Creek as long as possible, and rotating DCC closure from May 21 through June 15.

Regulatory Compliance

According to the CVPIA PEIS, actions implemented under certain provisions of the CVPIA could be undertaken without project-specific environmental documentation (EA or EIS) because these provisions were considered and sufficiently analyzed in the PEIS. Table VI-1 of the PEIS indicates that no additional environmental documentation would be required for actions undertaken under Sections 3406(b)(8), 3406(b)(9), 3406(b)(19), and 3406(d)(1).

As indicated in the Restoration Plan, the following two flow management actions would be implemented under Section 3406(b)(9); these actions therefore could be undertaken without further NEPA compliance:

- ❖ *Upper-mainstem Sacramento River* - Implement a schedule for flow changes that avoids, to the extent controllable, dewatering redds and isolating or stranding juvenile anadromous salmonids, consistent with SWRCB Order 90-5.
- ❖ *American River* - Reduce and control flow fluctuations to avoid and minimize adverse effects on juvenile salmonids.

Requirements Most Likely to Apply

Because facilities management actions will affect the timing and magnitude flows, which will affect species that are federally listed as threatened or endangered, compliance with the federal Endangered Species Act (in coordination with USFWS and NOAA-Fisheries) will be required. Separate from federal agency involvement in proposing the Restoration Plan action (which would itself require NEPA compliance), involvement of USFWS and NOAA-Fisheries may trigger the need for NEPA compliance, and may trigger the need for compliance with the Fish and Wildlife Coordination Act when actions involve the modification of surface water.

The following are therefore most likely to apply to modifying facilities management:

- ❖ NEPA
- ❖ Section 7 or 10 of the Endangered Species Act
- ❖ Fish and Wildlife Coordination Act

Regulatory Compliance Triggers and Timing

Because the activities related to this action category are not expected to involve structural projects, most are not expected to require environmental permits or compliance with environmental regulations. The following table identifies the conditions that may trigger the need for environmental regulatory compliance for a specific action in this category. Only those laws, permits, and other authorizations that may apply to facilities management actions are listed, with the triggers for each. See Table 3 at the end of this chapter for a summary listing of permits and authorizations that pertain to each action category. Examples of permit applications are provided in Appendix B.

Decision Analysis Table for Determining Regulatory Compliance Requirements of Facilities Management Actions	
Do Any of the Following Apply?	If So, Compliance Is Required with:
<ul style="list-style-type: none"> ♦ The action is considered a federal agency proposal, and environmental effects of the action are not adequately addressed in the programmatic EIS (CVPIA PEIS) or have substantially changed since completion of the PEIS 	NEPA (see page 4-6)
<ul style="list-style-type: none"> ♦ The action is located in waters of the United States, including wetlands, and/or the action is located in navigable waters of the United States, and: <ul style="list-style-type: none"> ♦ The action is considered a discharge of dredged or fill material ♦ The action would affect facilities designed, built, or managed by the Corps 	Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act (see page 4-16)
<ul style="list-style-type: none"> ♦ The action is considered a major construction activity and species listed as threatened or endangered under the federal Endangered Species Act (ESA) may be found in the project area; the action may affect the listed species (Section 7) ♦ The action may result in the "take" of a species listed as threatened or endangered under the ESA (Section 7 or 10) 	Section 7 or 10 of the Endangered Species Act/Action Specific Implementation Plan (see page 4-33)
<ul style="list-style-type: none"> ♦ The action is considered a federal agency proposal and proposes to control or modify surface water 	Fish and Wildlife Coordination Act (see page 4-41)
<ul style="list-style-type: none"> ♦ The action is considered a federal agency proposal and affects a river within the National Wild and Scenic Rivers system (American River only) 	National Wild and Scenic Rivers Act (see page 4-46)

<ul style="list-style-type: none"> ♦ The action occurs on or requires access across federal public lands administered by U.S. Bureau of Reclamation (USBR), U.S. Bureau of Land Management (BLM), National Park Service (NPS), U.S. Forest Service (USFS), or Natural Resources Conservation Service (NRCS) ♦ The action modifies, improves, or affects facilities designed, built, operated, maintained or otherwise managed by USBR, BLM, NPS, USFS, or NRCS ♦ The action is considered subject to regulation under the Swampbuster provision of the Food Security Act, FACTA, or the Farm Bill of 1996 (NRCS only) 	Federal agency authority (encroachment approval) from USBR, BLM, NPS, USFS, or NRCS (see pages 4-50, 4-52, 4-55, 4-57, and 4-59)
<ul style="list-style-type: none"> ♦ The action is considered a federal agency proposal and affects prime or unique farmland 	Farmland Protection Policy Act (see page 4-63)
<ul style="list-style-type: none"> ♦ The action is considered a federal agency proposal and is located within or may affect a floodplain 	Executive Order 11988 - Floodplain Management (see page 4-65)
<ul style="list-style-type: none"> ♦ The action is considered a federal agency proposal and is located within or may affect wetlands 	Executive Order 11990 – Protection of Wetlands (see page 4-67)
<ul style="list-style-type: none"> ♦ The action is considered a federal agency proposal and may affect Native American religious practices 	American Indian Religious Freedom Act of 1978 (see page 4-71)
<ul style="list-style-type: none"> ♦ The action may affect Indian Trust Assets 	Indian Trust Assets (see page 4-72)
<ul style="list-style-type: none"> ♦ The action involves a state or local agency action and is considered a project for CEQA purposes 	CEQA (see page 4-6)
<ul style="list-style-type: none"> ♦ A species listed as a candidate, threatened, or endangered under the California Endangered Species Act (CESA) may be present in the project area ♦ The action may result in the "take" of a species listed under CESA (Section 2081) 	Section 2081 of the California Fish and Game Code – California Endangered Species Act/Action Specific Implementation Plan (see page 4-90)
<ul style="list-style-type: none"> ♦ The action is considered a federal agency proposal and occurs in an area where properties are listed, or are eligible for listing, on the National Register of Historic Places 	Section 106 of the National Historic Preservation Act (State Historic Preservation Officer consultation) (see page 4-101)
<ul style="list-style-type: none"> ♦ The action occurs in tideland; submerged land; the bed of a navigable river, stream, lake, bay, estuary, inlet, or strait; swamp land, or overflowed land ♦ The action would affect water-related commerce, navigation, fisheries, recreation, open space, or other public trust uses 	State Lands Commission land use lease (see page 4-107)
<ul style="list-style-type: none"> ♦ The action would be located within the right-of-way (ROW) of state-owned roadway, including bridge alterations 	California Department of Transportation encroachment permit/ROW (see page 4-121)

<ul style="list-style-type: none">♦ The action involves temporary or mobile facilities or equipment that may emit air pollutants♦ The action involves facilities or equipment considered a stationary source (e.g. building, structure, installation) that may emit air pollutants♦ The action involves a proposal to operate equipment that emits pollutants from a stationary or mobile source♦ The action involves construction, operation, or maintenance that may generate fugitive dust emissions	Air district Authority to Construct and Permit to Operate (see page 4-125)
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Water Acquisitions

Definition of Actions: Actions in this category involve supplementing flows with water acquired from willing sellers and purchasing water rights.

Associated Categories: See also "Flow Management" (page 3-53) for actions that include modifying flow schedules, or modifying flows by using dedicated water in combination with water acquired from willing sellers. See also "Facilities Management" (page 3-58) for such actions that involve modifying facilities operations (e.g. changing the schedule or amount of reservoir releases or modifying the schedule of Delta exports), in conjunction with acquiring water, to augment flows.

Actions Addressed under Other Categories: Actions that focus on implementing river flow regulation plans or maintaining flows but that do not include a water acquisition component are addressed under "Flow Management" (page 3-53). Actions that focus on changing the timing or amount of releases from water storage facilities are addressed under "Facilities Management" (page 3-58).

Restoration Plan Actions: *Cow, Bear, Battle, Paynes, Antelope, and Deer Creeks* - supplement flows through water acquisitions or negotiated agreements; *Butte Creek* - obtain additional flows from Parrott-Phelan Diversion, purchase water rights, acquire water rights as part of the Western Canal Siphon project; *Feather, Yuba, and Bear Rivers* - supplement flows through water acquisitions; *American River* - develop and implement a river regulation plan, increase flows for American shad through water acquisitions and other means; *Mokelumne River* - supplement flows through water acquisitions; *Cosumnes River* - acquire water or negotiate agreements to augment flows, pursue opportunities to purchase existing water rights; *Calaveras River* - supplement flows through water acquisitions; *Merced River* - supplement flows provided pursuant to the Davis-Grunsky Contract and FERC license through water acquisitions or negotiate agreements to improve conditions for Chinook salmon; *Tuolumne River* - supplement FERC agreement flows through water acquisitions or negotiate agreements to improve conditions for Chinook salmon; *Stanislaus River* - implement an interim river regulation plan through use of water acquired from willing sellers and other means; *Mainstem San Joaquin River* - acquire water from willing sellers to implement a flow schedule that improves conditions for Chinook salmon.

Overview

Water acquisitions are necessary for several uses, including providing additional water to help meet the needs of spawning, rearing, and migrating anadromous fish; maintaining habitat conditions; and implementing river management plans on selected rivers. Water can be acquired through negotiated agreements, purchase of water, or purchase of existing water rights from willing sellers. Section 3406(b)(3) of the CVPIA provides for acquisition of water to supplement the quantity of water dedicated to fish and wildlife needs under Section 3406(b)(2) through various methods, including transfers; conjunctive use; and temporary and permanent land fallowing, including purchase, lease, and option of water, water rights, and associated agricultural land. (Modification of CVP operations, also provided for under Section 3406(b)(3), is addressed under "Facilities Management.")

Completing any necessary water transfers can be a complicated transaction. Only holders of pre-1914 rights may transfer water without seeking approval from the California State Water Resources Control Board (SWRCB). Whether the water right is appropriative or riparian, or whether the water is obtained pursuant to a water supply contract, also affects whether the water is transferable and what must be done to transfer it. In 1992, as a result of changes to the law designed to facilitate the State Drought Water Bank in 1991, the governor stated that certain criteria must be met in developing a fair and effective water transfer policy. Separate guidebooks have been prepared by the U.S. Bureau of Reclamation (USBR), California Department of Water Resources (DWR), and a number of water agencies constituting a joint powers authority (Bookman-Edmonston Engineering 1996) to assist permitting of temporary and long-term water transfers.

Regulatory Compliance

Requirements Most Likely to Apply

Acquiring water rights, purchasing water, or transferring water through negotiated agreements will usually trigger the need for modification of water rights through the California State Water Resources Control Board (SWRCB). The requirement of authorization from SWRCB will trigger the need for CEQA compliance.

The following are therefore most likely to apply to water acquisitions:

- ❖ CEQA
- ❖ Water rights

Regulatory Compliance Triggers and Timing

Because the activities related to this action category are not expected to involve structural projects, most are not expected to require environmental permits or compliance with environmental regulations. The following table identifies the conditions that may trigger the need for environmental regulatory compliance for a specific action in this category. Only those laws, permits, and other authorizations that may apply to water acquisition actions are listed, with the triggers for each. See Table 3 at the end of this chapter for a summary listing of permits and authorizations that pertain to each action category. Examples of permit applications are provided in Appendix B.

Decision Analysis Table for Determining Regulatory Compliance Requirements of Water Acquisition Actions	
Do Any of the Following Apply?	If So, Compliance Is Required with:
♦ The action is considered a federal agency proposal, and environmental effects of the action are not adequately addressed in the programmatic EIS (CVPIA PEIS) or have substantially changed since completion of the PEIS	NEPA (see page 4-6)
♦ The action is considered a major construction activity and species listed as threatened or endangered under the federal Endangered Species Act (ESA) may be found in the project area; the action may affect the listed species (Section 7) ♦ The action may result in the "take" of a species listed as threatened or endangered under the ESA (Section 7 or 10)	Section 7 or 10 of the Endangered Species Act/Action Specific Implementation Plan (see page 4-33)
♦ The action is considered a federal agency proposal and affects a river within the National Wild and Scenic Rivers system (American River only)	National Wild and Scenic Rivers Act (see page 4-46)
♦ The action occurs on or requires access across federal public lands administered by Natural Resources Conservation Service (NRCS) ♦ The action modifies, improves, or affects facilities designed, built, operated, maintained or otherwise managed by NRCS The action is considered subject to regulation under the Swampbuster provision of the Food Security Act, FACTA, or the Farm Bill of 1996	Federal agency authority (encroachment approval) from NRCS (see page 4-59)
♦ The action is considered a federal agency proposal and affects prime or unique farmland	Farmland Protection Policy Act (see page 4-63)
♦ The action is considered a federal agency proposal and may affect minority or low-income populations	Executive Order 12898 – Environmental Justice in Minority and Low-Income Populations (see page 4-69)
♦ The action is considered a federal agency proposal and may affect Native American religious practices	American Indian Religious Freedom Act of 1978 (see page 4-71)
♦ The action may affect Indian Trust Assets	Indian Trust Assets (see page 4-72)
♦ The action involves a state or local agency action and is considered a project for CEQA purposes	CEQA (see page 4-6)

<ul style="list-style-type: none"> ♦ The action requires the diversion of water not authorized under an existing water right ♦ The action includes purchase or transfer of water ♦ The action includes a change in use or change in point of diversion of water under an existing water right ♦ The action includes storing more than 10 acre-feet of water for more than 30 days ♦ The action requires appropriation of water for use on non-riparian land 	<p>Water rights (see page 4-85)</p>
<ul style="list-style-type: none"> ♦ A species listed as a candidate, threatened, or endangered under the California Endangered Species Act (CESA) may be present in the project area ♦ The action may result in the "take" of a species listed under CESA (Section 2081) 	<p>Section 2081 of the California Fish and Game Code – California Endangered Species Act/Action Specific Implementation Plan (see page 4-90)</p>

Water Allocation and Water Rights Adjudication

Definition of Actions: Actions in this category involve developing water allocation plans and conjunctive use programs, and coordinating with the California State Water Resources Control Board (SWRCB) in determining water right priorities among various water right holders.

Actions Addressed under Other Categories: Actions that focus on maintaining instream flows and on managing instream temperatures by unspecified or various means are addressed under "Flow Management" (page 3-53) and "Temperature Management" (page 3-49), respectively. Such actions are addressed under "Water Acquisitions" (page 3-63) or "Facilities Management" (page 3-58) when emphasis is on purchasing water or on modifying operation of water diversion facilities to enhance flows.

Restoration Plan Actions: *Butte Creek* - adjudicate water rights and provide water master service for the entire creek; *American River* - develop a long-term water allocation plan; *Mainstem San Joaquin River* - establish a basin-wide conjunctive use program.

Overview

One Restoration Plan action, on Butte Creek, involves adjudicating water rights and providing water master service. Currently, Butte Creek is adjudicated only in the reach above the Western Canal, and watermaster service is currently provided from April through September from the headwaters to the Western Canal under the original adjudication. Adjudication of the creek below the Western Canal would provide for maintenance of adequate instream flows for the entire year.

Although not involving adjudication of water rights, actions involving long-term water allocation of flows on the American River and establishing a basin-wide conjunctive use program for the San Joaquin River are similar in that they are based on the objective of allocating flows among multiple diverters over the long term.

Regulatory Compliance

Requirements Most Likely to Apply

Actions involving the adjudication of water rights will require modification of water rights through the SWRCB. The requirement of authorization from SWRCB will trigger the need for CEQA compliance.

The following are therefore most likely to apply to water rights adjudication and will apply to other water allocation actions that require modification of water rights:

- ❖ CEQA

❖ Water rights

Regulatory Compliance Triggers and Timing

Because the activities related to this action category are not expected to involve structural projects, most are not expected to require environmental permits or compliance with other environmental regulations. The following table identifies the conditions that may trigger the need for environmental regulatory compliance for a specific action in this category. Only those laws, permits, and other authorizations that may apply to water allocation and water rights adjudication actions are listed, with the triggers for each. See Table 3 at the end of this chapter for a summary listing of permits and authorizations that pertain to each action category. Examples of permit applications are provided in Appendix B.

Decision Analysis Table for Determining Regulatory Compliance Requirements of Water Allocation and Water Rights Adjudication	
Do Any of the Following Apply?	If So, Compliance Is Required with:
<ul style="list-style-type: none"> ♦ The action is considered a federal agency proposal, and environmental effects of the action are not adequately addressed in the programmatic EIS (CVPIA PEIS) or have substantially changed since completion of the PEIS 	NEPA (see page 4-6)
<ul style="list-style-type: none"> ♦ The action is considered a major construction activity and species listed as threatened or endangered under the federal Endangered Species Act (ESA) may be found in the project area; the action may affect the listed species (Section 7) ♦ The action may result in the "take" of a species listed as threatened or endangered under the ESA (Section 7 or 10) 	Section 7 or 10 of the Endangered Species Act/Action Specific Implementation Plan (see page 4-33)
<ul style="list-style-type: none"> ♦ The action is considered a federal agency proposal and proposes to control or modify surface water 	Fish and Wildlife Coordination Act (see page 4-41)
<ul style="list-style-type: none"> ♦ The action is considered a federal agency proposal and affects a river within the National Wild and Scenic Rivers system (American River only) 	National Wild and Scenic Rivers Act (see page 4-46)
<ul style="list-style-type: none"> ♦ The action occurs on or requires access across federal public lands administered by U.S. Bureau of Reclamation (USBR), U.S. Bureau of Land Management (BLM), or Natural Resources Conservation Service (NRCS) ♦ The action modifies, improves, or affects facilities designed, built, operated, maintained or otherwise managed by USBR, BLM, or NRCS ♦ The action is considered subject to regulation under the Swampbuster provision of the Food Security Act, FACTA, or the Farm Bill of 1996 (NRCS only) 	Federal agency authority (encroachment approval) from USBR, BLM, or NRCS (see pages 4-50, 4-52 and 4-59)
<ul style="list-style-type: none"> ♦ The action is considered a federal agency proposal and affects prime or unique farmland 	Farmland Protection Policy Act (see page 4-63)

♦ The action is considered a federal agency proposal and may affect minority or low-income populations	Executive Order 12898 – Environmental Justice in Minority and Low-Income Populations (see page 4-69)
♦ The action may affect Indian Trust Assets	Indian Trust Assets (see page 4-72)
♦ The action involves a state or local agency action and is considered a project for CEQA purposes	CEQA (see page 4-6)
<ul style="list-style-type: none"> ♦ The action requires the diversion of water not authorized under an existing water right ♦ The action includes purchase or transfer of water ♦ The action includes a change in use or change in point of diversion of water under an existing water right ♦ The action includes storing more than 10 acre-feet of water for more than 30 days ♦ The action requires appropriation of water for use on non-riparian land 	Water rights (see page 4-85)
<ul style="list-style-type: none"> ♦ A species listed as a candidate, threatened, or endangered under the California Endangered Species Act (CESA) may be present in the project area ♦ The action may result in the "take" of a species listed under CESA (Section 2081) 	Section 2081 of the California Fish and Game Code – California Endangered Species Act/Action Specific Implementation Plan (see page 4-90)
♦ The action is considered a federal agency proposal and occurs in an area where properties are listed, or are eligible for listing, on the National Register of Historic Places	Section 106 of the National Historic Preservation Act (State Historic Preservation Officer consultation) (see page 4-101)

Evaluations - Monitoring and Research

Definition of Actions: This category includes one Restoration Plan action that involves conducting evaluations pursuant to Section 3406(e) of the CVPIA. Some environmental regulatory requirements would also apply to Restoration Plan evaluations, such as monitoring activities, that may affect special-status species; this category therefore would also apply to such evaluations.

Restoration Plan Action: *Central Valley-wide* - encourage the restoration of small tributaries by evaluating the feasibility of various measures described in the Restoration Plan.

Overview

Water resources data and information management consists of assembling, compiling, and interpreting accurate and appropriate data to support management decisions for monitoring water resources and aquatic habitats. Data are needed on hydrologic conditions; reservoir operations; diversions and exports; effects of changes in operations of Delta facilities, including the Delta Cross Channel (DCC) and the barrier at the head of Old River; water use rates and patterns; and groundwater levels and pumping. Additional data for appropriate resource management are also needed on water quality; habitat conditions; and abundance, distribution, survival and mortality rates and limiting factors of anadromous fish populations.

The Restoration Plan actions include a variety of monitoring programs. These include monitoring water quality (particularly at agricultural return outfalls) to identify limiting conditions for anadromous fish; evaluating the effectiveness of fish ladders; evaluating the effects of flow fluctuations on spawning, incubation, and rearing of Chinook salmon; evaluating impacts of Delta inflow and export rates on juvenile salmon survival when the DCC is closed; and monitoring sport fishing and evaluating the need for regulations to protect salmonids. The CVPIA includes provisions to develop a comprehensive assessment and monitoring program for fish resources, ecological and hydrological models, and data for system operations.

Regulatory Compliance

Requirements Most Likely to Apply

Because of the lack of details concerning the precise nature of monitoring programs that will be performed as part of the Restoration Plan, it is unknown which permits, if any, will be required. Permitting requirements of each monitoring program will need to be evaluated on an individual basis as pertinent information becomes available.

It is likely that permitting requirements for monitoring programs will be limited to those involving the sampling of threatened or endangered species, unless new facilities (i.e. weirs) are employed.

Monitoring that involves a species listed under the federal Endangered Species Act will necessarily require some form of take authorization. If the monitoring program has been subject to a Section 7 consultation, the take authorization should be provided as part of the Biological Opinion, through an incidental take statement. If no consultation has been conducted, incidental take should be covered through compliance with the requirements of Section 10 of the Endangered Species Act. If the monitoring action qualifies under Section 10(a)(1)(A), an incidental take research permit would be granted. Otherwise, the monitoring program should follow the requirements for an incidental take permit under Section 10(a)(1)(B). In addition, California Department of Fish and Game (DFG) typically require those performing monitoring activities to obtain a Fish and Game scientific collection permit.

Regulatory Compliance Triggers and Timing

The following table identifies the conditions that may trigger the need for environmental regulatory compliance for a specific action in this category. Only those laws, permits, and other authorizations that may apply to monitoring actions are listed, with the triggers for each. See Table 3 at the end of this chapter for a summary listing of permits and authorizations that pertain to each action category. Examples of permit applications are provided in Appendix B.

Decision Analysis Table for Determining Regulatory Compliance Requirements of Monitoring and Research Actions	
Do Any of the Following Apply?	If So, Compliance Is Required with:
<ul style="list-style-type: none"> ♦ The action is considered a federal agency proposal, and environmental effects of the action are not adequately addressed in the programmatic EIS (CVPIA PEIS) or have substantially changed since completion of the PEIS 	NEPA (see page 4-6)
<ul style="list-style-type: none"> ♦ The action is considered a major construction activity and species listed as threatened or endangered under the federal Endangered Species Act (ESA) may be found in the project area; the action may affect the listed species (Section 7) ♦ The action may result in the "take" of a species listed as threatened or endangered under the ESA (Section 7 or 10) 	Section 7 or 10 of the Endangered Species Act /Action Specific Implementation Plan (see page 4-33)
<ul style="list-style-type: none"> ♦ The action is considered a federal agency proposal and proposes to control or modify surface water 	Fish and Wildlife Coordination Act (see page 4-41)
<ul style="list-style-type: none"> ♦ The action involves a state or local agency action and is considered a project for CEQA purposes 	CEQA (see page 4-6)
<ul style="list-style-type: none"> ♦ A species listed as a candidate, threatened, or endangered under the California Endangered Species Act (CESA) may be present in the project area ♦ The action may result in the "take" of a species listed under CESA (Section 2081) 	Section 2081 of the California Fish and Game Code – California Endangered Species Act/Action Specific Implementation Plan (see page 4-90)
<ul style="list-style-type: none"> ♦ The action is considered a federal agency proposal and occurs in an area where properties are listed, or are eligible for listing, on the National Register of Historic Places 	Section 106 of the National Historic Preservation Act (State Historic Preservation Officer consultation) (see page 4-101)

Table 2. Summary of Central Valley Rivers and Tributaries and Associated Restoration Plan Action Categories

	Fish Screens	Passage	Relocation of Diversions	Channel and Instream Habitat Modification	Spawning Gravel	Riparian Habitat	Meander Belts	Watershed Mgmt	Land Acquisition	Water Quality	Temperature Mgmt	Flow Mgmt	Facilities Mgmt	Water Acquisitions	Water Allocation and Water Rights Adjudication	Evaluations - Monitoring and Research
Sacramento River Basin																
Upper mainstem Sacramento River	✓	✓			✓		✓			✓	✓	✓	✓			✓
Upper Sacramento River tributaries																
Clear Creek		✓		✓	✓	✓		✓		✓		✓	✓	✓		✓
Cow Creek	✓	✓	✓		✓	✓		✓	✓	✓	✓	✓	✓	✓		
Bear Creek	✓													✓		
Cottonwood Creek	✓			✓	✓	✓		✓				✓				
Battle Creek	✓			✓										✓		✓
Paynes Creek					✓									✓		
Antelope Creek	✓	✓												✓		✓
Elder Creek								✓								✓
Mill Creek					✓	✓		✓	✓		✓	✓		✓		✓
Thomes Creek					✓			✓					✓			✓
Deer Creek		✓			✓	✓		✓			✓	✓	✓	✓		✓
Stony Creek																✓
Big Chico Creek		✓	✓		✓	✓		✓	✓							
Butte Creek	✓	✓	✓	✓	✓	✓		✓	✓		✓	✓	✓	✓	✓	✓
Colusa Basin Drain	✓	✓	✓	✓	✓	✓		✓			✓	✓	✓			✓
Lower Sacramento River and Delta tributaries																
Feather River											✓		✓	✓		✓
Yuba River	✓	✓							✓				✓	✓		✓
Bear River	✓	✓								✓	✓			✓		✓
American River	✓			✓	✓	✓						✓	✓	✓	✓	✓
Mokelumne River	✓				✓	✓		✓		✓	✓		✓	✓		✓
Cosumnes River	✓					✓		✓						✓		✓
Calaveras River	✓	✓									✓			✓		✓
San Joaquin Basin																
Merced River	✓			✓	✓	✓		✓						✓		✓
Tuolumne River	✓			✓	✓	✓		✓				✓	✓	✓		✓
Stanislaus River	✓			✓	✓	✓		✓				✓	✓	✓		✓
Mainstem San Joaquin River	✓									✓		✓		✓	✓	✓
Sacramento-San Joaquin Delta	✓	✓										✓	✓			✓
Central Valley-wide										✓						✓

Table 2 Notes

Table 2 presents an overview of *likely* classification of the Restoration Plan actions. Action coordinators, however, should use detailed information on action components and consult the definitions of actions listed under each category and summarized below to determine the most appropriate category or categories for their actions.

Where an action can be classified in more than one category, each applicable category is noted in the table, therefore, a single action may be represented by a check mark in more than one category (e.g., an action to install both fish screens and ladders is represented by check marks under both "Fish Screens" and "Passage").

The programs and other activities listed in the Restoration Plan as "evaluations" (rather than "actions") are not shown in this handbook because they are not expected to require environmental regulatory compliance; however, it should be noted that the action category "Evaluations - Monitoring and Research" would also apply to Restoration Plan evaluations that may affect special-status species, most likely triggering the need for compliance with the federal and state Endangered Species acts.

Public participation and law enforcement actions are not addressed in this handbook because these actions are not expected to require environmental regulatory compliance.

Definitions of Action Categories:

<i>Fish screens:</i>	Installing and improving fish screens, installing barriers to eliminate fish stranding
<i>Passage:</i>	Constructing, installing, modifying, and repairing structures to enhance fish passage, and modifying or removing dams that block passage
<i>Relocation of diversions:</i>	Relocating diversion facilities
<i>Channel and instream habitat modification:</i>	Restoring channel structure and physical in-channel conditions
<i>Spawning gravel:</i>	Restoring, replenishing, and protecting spawning gravel; constructing gravel beds; enhancing gravel recruitment; loosening compacted sedimentation and gravel; modifying gravel mining operations
<i>Riparian habitat:</i>	Establishing, restoring, maintaining, and protecting riparian habitat
<i>Meander belts:</i>	Creating meander belts
<i>Watershed management:</i>	Developing watershed management plans, coordinating flood management activities, modifying land use practices to reduce sedimentation and protect habitat
<i>Land acquisition:</i>	Obtaining titles or conservation easements from willing sellers
<i>Water quality:</i>	Eliminating toxic discharges and reducing chemical and trace element contamination, remediating water quality problems from past practices, establishing water quality standards, maintaining specified water quality standards
<i>Temperature management:</i>	Maintaining water temperatures at specified levels
<i>Flow management:</i>	Implementing flow regulation plans and schedules, maintaining specified instream flows, controlling flow fluctuations
<i>Facilities management:</i>	Modifying operations of water diversion and storage facilities and the use of seasonal diversion dams
<i>Water acquisitions:</i>	Supplementing flows with water acquired from willing sellers
<i>Water allocation and water rights adjudication:</i>	Developing water allocation plans and conjunctive use programs, coordinating with SWRCB in determining water right priorities
<i>Evaluations - Monitoring and Research:</i>	Conducting evaluations (that may affect special-status species)

Table 3. Summary of Environmental Compliance Needs for Each Restoration Plan Action Category

	Federal Laws, Executive Orders, Administrative Policies, Implementing Regulations, and Other Authorities				
	Federal Laws				
Action Category	National Environmental Policy Act	Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act (Corps, NRCS)	Section 7 or 10 of the Endangered Species Act (USFWS, NMFS)	Fish and Wildlife Coordination Act (USFWS, NMFS, DFG)	National Wild and Scenic Rivers Act (NPS, USFS)
Fish screens	✓✓	✓✓	✓✓	✓✓	
Passage	✓✓	✓✓	✓✓	✓✓	
Relocation of diversions	✓✓	✓✓	✓✓	✓✓	
Channel and instream habitat modification	✓✓	✓✓	✓✓	✓✓	☑
Spawning gravel	✓✓	✓✓	✓✓	✓✓	☑
Riparian habitat	✓✓	✓	✓✓	✓	☑
Meander belts	✓✓	✓✓	✓✓	✓✓	
Watershed management	✓	✓	✓	✓	✓
Land acquisition	✓		✓		
Water quality	✓	✓	✓	✓	
Temperature management	✓	✓	✓	✓	
Flow management	✓	✓	✓	✓	☑
Facilities management	✓✓	✓	✓✓	✓✓	☑
Water acquisitions	✓		✓		
Water allocation and water rights adjudication	✓		✓	✓	✓
Monitoring	✓		✓	✓	

- ✓✓ = Action will most likely require regulatory compliance
 ✓ = Action may require regulatory compliance
 ☑ = American River only

See the decision analysis table under the discussion of each category earlier in this chapter for more information.

	Federal Laws, Executive Orders, Administrative Policies, Implementing Regulations, and Other Authorities (Continued)					
	<i>Other Federal Agency Authorities (Encroachment Approvals)</i>					
Action Category	U.S. Bureau of Reclamation	U.S. Bureau of Land Management	National Park Service	U.S. Forest Service	Natural Resources Conservation Service	Bureau of Indian Affairs
Fish screens						
Passage	✓	✓				
Relocation of diversions	✓	✓	✓	✓		✓
Channel and instream habitat modification						
Spawning gravel						
Riparian habitat			✓	✓	✓	✓
Meander belts		✓	✓		✓	✓
Watershed management			✓	✓	✓	✓
Land acquisition						
Water quality					✓	
Temperature management					✓	
Flow management			✓	✓	✓	
Facilities management	✓	✓	✓	✓	✓	
Water acquisitions					✓	
Water allocation and water rights adjudication	✓	✓			✓	
Monitoring						

- ✓✓ = Action will most likely require regulatory compliance
✓ = Action may require regulatory compliance

See the decision analysis table under the discussion of each category earlier in this chapter for more information.

	Federal Laws, Executive Orders, Administrative Policies, Implementing Regulations, and Other Authorities (Continued)					
	<i>Executive Orders and Administrative Policies</i>					
<i>Action Category</i>	Farmland Protection Policy Act (NRCS)	Executive Order 11988 - Floodplain Management	Executive Order 11990 - Protection of Wetlands	Executive Order 12898 - Environmental Justice in Minority and Low-Income Populations	American Indian Religious Freedom Act of 1978	Indian Trust Assets (BIA)
Fish screens			✓	✓		
Passage		✓	✓	✓	✓	✓
Relocation of diversions			✓✓	✓	✓	✓
Channel and instream habitat modification		✓	✓✓	✓	✓	✓
Spawning gravel		✓	✓	✓	✓	✓
Riparian habitat	✓	✓✓	✓	✓		✓
Meander belts	✓	✓✓	✓✓	✓	✓	✓
Watershed management	✓	✓	✓	✓	✓	✓
Land acquisition	✓	✓✓	✓	✓	✓	✓
Water quality	✓		✓	✓		✓
Temperature management	✓	✓	✓	✓	✓	✓
Flow management	✓	✓		✓	✓	✓
Facilities management	✓	✓	✓		✓	✓
Water acquisitions	✓			✓	✓	✓
Water allocation and water rights adjudication	✓			✓		✓
Monitoring						

✓✓ = Action will most likely require regulatory compliance
✓ = Action may require regulatory compliance

See the decision analysis table under the discussion of each category earlier in this chapter for more information.

	State Laws and Implementing Regulations						
Action Category	California Environmental Quality Act	Section 401 of the Clean Water Act (SWRCB, RWQCBs)	National Pollutant Discharge Elimination System (RWQCBs)	Waste Discharge Requirements (RWQCBs)	Water Rights (SWRCB)	Sections 2081 and 2090 of the California Fish and Game Code - California Endangered Species Act (DFG)	Section 1600 Streambed Alteration Agreement (DFG)
Fish screens	✓✓	✓✓		✓		✓✓	✓
Passage	✓✓	✓✓	✓	✓✓		✓✓	✓✓
Relocation of diversions	✓✓	✓✓	✓	✓		✓✓	✓✓
Channel and instream habitat modification	✓✓	✓✓	✓	✓✓		✓✓	✓✓
Spawning gravel	✓✓	✓✓	✓✓	✓✓		✓✓	✓✓
Riparian habitat	✓	✓	✓	✓		✓✓	✓
Meander belts	✓✓	✓✓	✓✓	✓✓		✓✓	✓✓
Watershed management	✓	✓	✓	✓		✓	✓
Land acquisition	✓					✓	
Water quality	✓	✓	✓	✓	✓	✓	✓
Temperature management	✓	✓	✓	✓	✓	✓	✓
Flow management	✓	✓	✓	✓	✓	✓	✓
Facilities management	✓					✓	
Water acquisitions	✓✓				✓✓	✓	
Water allocation and water rights adjudication	✓✓				✓✓	✓	
Monitoring	✓					✓	

✓✓ = Action will most likely require regulatory compliance
✓ = Action may require regulatory compliance

See the decision analysis table under the discussion of each category earlier in this chapter for more information.

	State Laws and Implementing Regulations (Continued)						Local Regulatory Compliance
Action Category	State Historic Preservation Officer Consultation under Section 106 of the National Historic Preservation Act	State Lands Commission Land Use Lease	State Reclamation Board Encroachment Permit	Approval of Plans and Specifications to Construct or Enlarge a Dam or Reservoir and Certificate of Approval to Store Water and to Repair or Alter a Dam or Reservoir (DWR DSOD)	California Department of Transportation Encroachment Permit/ROW	Air District Authority to Construct and Permit to Operate	City or County Approvals and Entitlements
Fish screens	✓✓	✓	✓				✓
Passage	✓✓	✓	✓	✓✓			✓
Relocation of diversions	✓✓	✓	✓✓		✓		✓
Channel and instream habitat modification	✓✓	✓	✓				✓
Spawning gravel	✓✓	✓✓	✓				
Riparian habitat	✓	✓	✓		✓		✓
Meander belts	✓✓	✓✓	✓✓		✓		✓
Watershed management	✓	✓	✓	✓	✓		
Land acquisition							
Water quality	✓	✓		✓			
Temperature management	✓	✓		✓			
Flow management	✓	✓					
Facilities management	✓	✓			✓	✓	
Water acquisitions							
Water allocation and water rights adjudication	✓						
Monitoring	✓						

Note: National Historic Preservation Act compliance is shown under “State Historic Preservation Officer Consultation under Section 106 of the National Historic Preservation Act.”

- ✓✓ = Action will most likely require regulatory compliance
- ✓ = Action may require regulatory compliance
- ☑ = American River only

See the decision analysis table under the discussion of each category earlier in this chapter for more information.

4

Environmental Regulations and Permits

This chapter provides a summary of National Environmental Policy Act (NEPA) and California Environmental Quality Act (CEQA) processes and requirements and the federal, state, and local permits and authorizations that may be required to implement AFRP Restoration Plan (Restoration Plan) actions. The description of each federal and state permitting or authorization process includes (1) an *Overview*; (2) a list of *Key Project Features/Issues Triggering Need for Compliance*; (3) a discussion of *Timing*, summarizing information on compliance process timing, where possible; (4) a section on *Application to Restoration Plan Actions*, which begins with a listing of the general categories of actions (described in Chapter 3) to which the regulatory process is likely to apply, then describes the purpose of the regulatory requirement and the responsibilities of the agencies with jurisdiction; (5) details (e.g. specific procedures, office addresses, and fees) regarding the environmental compliance process; (6) a section on *Recommendations to Facilitate Environmental Review*, which addresses nuances of permitting and authorization processes as they apply to Restoration Plan actions; and (7) a flowchart illustrating the regulatory process.

A different set of authorizations and permits could apply to each Restoration Plan action. The reader should carefully review the description of each permit or authorization that may apply to the appropriate actions. Chapter 2 should also be reviewed for more broad-based compliance strategies that readers may use prior to proceeding with permit acquisition following the steps identified in Chapter 4.

It is important to note that nearly all Restoration Plan actions will require some type of permitting or regulatory compliance. Exceptions are public outreach and law enforcement actions (see page 3-1 in Chapter 3). Monitoring, research, and evaluations also are likely not to require environmental compliance or permitting; however, where such actions could affect special-status species, environmental regulatory compliance would be required (see page 3-70 in Chapter 3). Table 4 summarizes the key project features and issues that would trigger the need for Restoration Plan action compliance with the environmental laws, policies, and regulations described in this chapter.

Following is the organization of this chapter:

National Environmental Policy Act and California Environmental Quality Act.	4-6
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Other Federal Agency Authorities.	4-49
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American Indian Religious Freedom Act of 1978	4-71
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Section 1602 Lake or Streambed Alteration Agreement	4-97
State Historic Preservation Officer Consultation under Section 106 of the National Historic Preservation Act	4-101
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Reclamation Board Encroachment Permit	4-112
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California Department of Transportation Encroachment Permit/Right-of-Way	4-121
Air Districts Authority to Construct and Permit to Operate	4-125
Local Regulatory Compliance	4-129

Table 4. Summary of Key Project Features/Issues Triggering Need for Compliance

Environmental Laws, Policies, and Regulations	Key Project Features Triggering Need for Compliance
Federal Laws and Implementing Regulations	
National Environmental Policy Act	<ul style="list-style-type: none"> ✓ The action is considered a federal agency proposal, and environmental effects of the action are not adequately addressed in the Central Valley Project Programmatic Environmental Impact Statement (CVPIA PEIS) or have substantially changed since completion of the PEIS
Section 404 of Clean Water Act and Section 10 of Rivers and Harbors Act (Corps, NRCS)	<ul style="list-style-type: none"> ✓ The action is located in waters of the United States, including wetlands, and/or the action is located in navigable waters of the United States, and: <ul style="list-style-type: none"> ♦ The action is considered a discharge of dredged or fill material ♦ The action would affect facilities designed, built, or managed by the Corps
Sections 7 and 10 of Endangered Species Act (USFWS, NOAA Fisheries)	<p>Section 7</p> <ul style="list-style-type: none"> ✓ The action is considered a major construction activity and species listed as threatened or endangered under the federal Endangered Species Act (ESA) may be found in the project area; the action may affect the listed species ✓ The action may result in the "take" of a species listed as threatened or endangered under the ESA <p>Section 10</p> <ul style="list-style-type: none"> ✓ The action may result in the "take" of a species listed as threatened or endangered under the ESA
Fish and Wildlife Coordination Act (USFWS, NOAA Fisheries, DFG)	<ul style="list-style-type: none"> ✓ The action is considered a federal agency proposal and proposes to control or modify surface water
National Historic Preservation Act	<i>See listing under "State Historic Preservation Officer Consultation under Section 106 of the National Historic Preservation Act" below</i>
National Wild and Scenic Rivers Act (NPS, USFS)	<ul style="list-style-type: none"> ✓ The action is considered a federal agency proposal and affects a river within the National Wild and Scenic Rivers system
Other Federal Agency Authorities (encroachment approvals)	
U.S. Bureau of Reclamation (USBR), U.S. Bureau of Land Management (BLM), National Park Service (NPS), U.S. Forest Service (USFS), Natural Resources Conservation Service (NRCS), or Bureau of Indian Affairs (BIA)	<ul style="list-style-type: none"> ✓ The action occurs on or requires access across federal public lands administered by USBR, BLM, NPS, USFS, NRCS, or BIA ✓ The action modifies, improves, or affects facilities designed, built, operated, maintained or otherwise managed by USBR, BLM, NPS, USFS, NRCS, or BIA ✓ The action is considered subject to regulation under the Swampbuster provision of the Food Security Act, FACTA, or the Farm Bill of 1996 (NRCS only) ✓ Restoration Plan action occurs on or requires access across federal public lands administered by BLM ✓ Action modifies, improves, or affects facilities designed, built, operated, maintained or otherwise managed by BLM

Executive Orders and Administrative Policies	
Farmland Protection Policy Act (NRCS)	✓ The action is considered a federal agency proposal and affects prime or unique farmland
Executive Order 11988 - Floodplain Management	✓ The action is considered a federal agency proposal and is located within or may affect a floodplain
Executive Order 11990 - Protection of Wetlands	✓ The action is considered a federal agency proposal and is located within or may affect wetlands
Executive Order 12898 - Environmental Justice in Minority and Low-Income Populations	✓ The action is considered a federal agency proposal and may affect minority or low-income populations
American Indian Religious Freedom Act of 1978	✓ The action is considered a federal agency proposal and may affect Native American religious practices
Indian Trust Assets (BIA)	✓ The action may affect Indian Trust Assets
State Laws and Implementing Regulations	
California Environmental Quality Act (CEQA)	✓ The action involves a state or local agency action and is considered a project for CEQA purposes
Section 401 of the Clean Water Act (SWRCB, RWQCBs)	✓ The action involves a federal license or permit that may affect state water quality, and the action would result in a discharge of a pollutant into waters of the United States
National Pollutant Discharge Elimination System (RWQCBs)	✓ The action would result in a new or continued point-source discharge of pollutants into surface waters of the United States
Waste Discharge Requirements (RWQCBs)	✓ The action would result in any discharge or change in discharge (non-point or point source), other than to a community sewer system, which could affect the quality of either surface or groundwater
Water Rights (SWRCB)	✓ The action requires the diversion of water not authorized under an existing water right ✓ The action includes purchase or transfer of water ✓ The action includes a change in use or change in point of diversion of water under an existing water right ✓ The action includes storing more than 10 acre-feet of water for more than 30 days ✓ The action requires appropriation of water for use on non-riparian land
Section 2081 of California Fish and Game Code - California Endangered Species Act (DFG)	✓ A species listed as a candidate, threatened, or endangered under the California Endangered Species Act (CESA) may be present in the project area ✓ The action may result in the "take" of a species listed under CESA (Section 2081)

Section 1602 Streambed Alteration Agreement (DFG)	<ul style="list-style-type: none"> ✓ The action involves any activity that will divert or obstruct the natural flow or change the bed, channel, or bank of any river, stream, or lake ✓ The action involves the use or alteration of any streambed material ✓ The action occurs within the annual high-water mark of a wash, stream, or lake
State Historic Preservation Officer Consultation under Section 106 of National Historic Preservation Act	<ul style="list-style-type: none"> ✓ The action is considered a federal agency proposal and occurs in an area where properties are listed, or are eligible for listing, on the National Register of Historic Places
State Lands Commission Land Use Lease	<ul style="list-style-type: none"> ✓ The action occurs in tideland; submerged land; the bed of a navigable river, stream, lake, bay, estuary, inlet, or strait; swamp land, or overflowed land ✓ The action would affect water-related commerce, navigation, fisheries, recreation, open space, or other public trust uses
The Reclamation Board Encroachment Permit	<ul style="list-style-type: none"> ✓ The action would affect existing state flood control project facilities, including levees, dams, reservoirs, and floodways and flood control plans
Approval of Plans and Specifications to Construct or Enlarge a Dam or Reservoir and Certificate of Approval to Store Water and to Repair or Alter a Dam or Reservoir (DWR DSOD)	<ul style="list-style-type: none"> ✓ The action involves construction, modification, or enlargement of a dam or reservoir ✓ The action involves the repair or alteration of an existing dam or reservoir
California Department of Transportation Encroachment Permit/right-of-way (ROW)	<ul style="list-style-type: none"> ✓ The action would be located within the ROW of state-owned roadway, including bridge alterations
Air District Authority to Construct and Permit to Operate	<ul style="list-style-type: none"> ✓ The action involves temporary or mobile facilities or equipment that may emit air pollutants ✓ The action involves facilities or equipment considered a stationary source (e.g. building, structure, installation) that may emit air pollutants ✓ The action involves a proposal to operate equipment that emits pollutants from a stationary or mobile source ✓ The action involves construction, operation, or maintenance that may generate fugitive dust emissions
Local Regulatory Compliance	
City or County Approvals and Entitlements	<ul style="list-style-type: none"> ✓ The action would involve grading, building or modifying structures, special or conditional uses, modification or approval of general or specific plans (local or regional), and/or zoning ordinance amendment

National Environmental Policy Act and California Environmental Quality Act

NEPA and CEQA Requirements

Overview

NEPA (42 USC 4321, 40 CFR 1500.1) applies to any action that requires permits, entitlements, or funding from a federal agency; is jointly undertaken with a federal agency; or is proposed on federal land. CEQA applies to an action that is directly undertaken by a California public agency; is supported in whole or part through California public agency contracts, grants, subsidies, loans, or other assistance from a public agency; or involves California public agency issuance of a permit, lease, license, certificate, or other entitlement for use by a public agency. When federal and state or local agencies are involved in the same project, both NEPA and CEQA encourage preparation of a joint document, such as the programmatic Environmental Impact Report/Environmental Impact Statement (EIR/EIS). A joint document must meet the public review and notice requirements of both acts (see pages 2-14 through 2-49 for detailed information on strategies for NEPA and CEQA compliance and for definitions of terms used below).

Key Project Features/Issues Triggering Need For Compliance

- ✓ *NEPA: The action is considered a federal agency proposal, and environmental effects of the action are not adequately addressed in the Central Valley Project Improvement Act Programmatic Environmental Impact Statement (CVPIA PEIS), CALFED EIS/EIR, or have substantially changed since completion of the PEIS*
- ✓ *CEQA: The action involves a state or local agency action and is considered a project for CEQA purposes*

Timing

Actions requiring an EIS and EIR may require 12 months for decision. Actions requiring an Environmental Assessment (EA)/Finding of No Significant Impact (FONSI) and Initial Study/Negative Declaration may require approximately 5 months (see Table 1 in Chapter 2).

NEPA

Application to Restoration Plan Actions

Restoration Plan actions in all categories may require compliance with NEPA; actions in the following categories will most likely require compliance (see Table 3 in Chapter 3):

- ❖ Fish screens
- ❖ Passage
- ❖ Relocation of diversions
- ❖ Channel and instream habitat modification
- ❖ Spawning gravel
- ❖ Riparian habitat
- ❖ Meander belts
- ❖ Facilities management

NEPA Requirements

NEPA requires every federal agency to disclose the environmental effects of its actions for public review purposes and for assisting the federal agency in assessing alternatives to and the consequences of the proposed action. If an action was not considered in a previously prepared NEPA document (see "Program-Level NEPA and CEQA Compliance" below) or does not fall under a Categorical Exclusion (described below), an EA is typically prepared to determine whether the project may have a significant environmental effect. If the project would not have a significant effect or if mitigation incorporated into the project description would reduce the project's effect to a less-than-significant level, a FONSI is prepared along with an EA; otherwise, an EIS is required. The EIS must consider, disclose, and discuss all major points of view on the environmental impacts of a proposed project and alternatives. The draft EIS must be circulated for public and agency review and comment. The U.S. Environmental Protection Agency (EPA) is authorized to review and comment on the environmental impact of matters subject to NEPA. After comments are received and reviewed, the final EIS is prepared and circulated and the lead agency issues a Record of Decision, which certifies compliance with NEPA and specifies mitigation requirements and commitments.

Prior to beginning the NEPA compliance for a particular Restoration Plan action, the action coordinator should consult the regional environmental coordinator in Portland, Oregon, for current NEPA guidance for the U.S. Fish and Wildlife Service (USFWS) (see page 2-14 in Chapter 2).

Recommendations to Facilitate NEPA Compliance

- ❖ "Tier" from the CVPIA PEIS or CALFED EIS/EIR.
- ❖ Prepare combined project-level analysis of several specific Restoration Plan actions within the same watershed in a single NEPA document; incorporate the CVPIA PEIS, CALFED EIS/EIR and other NEPA documents by reference and consistent with the appropriate mitigation strategies set forth in the Programmatic Documents.
- ❖ Focus the project description of the action to meet conditions of a Categorical Exclusion and include provisions in the project description to avoid extraordinary circumstances, rather than preparing an EA/FONSI or EIS.
- ❖ Incorporate mitigation into the description of the action to prepare an EA/FONSI rather than an EIS.
- ❖ Ensure that the NEPA document confirms compliance with all Executive Orders and Administrative Policies.
- ❖ Ensure that the NEPA document describes the other environmental permitting and approvals required to implement the proposed action.

See also Chapter 2 for more specific guidance on including NEPA compliance in an overall strategy for environmental compliance.

CEQA

Application to Restoration Plan Actions

Restoration Plan actions in all categories may require CEQA compliance; actions in the following categories will most likely require compliance (see Table 3 in Chapter 3):

- ❖ Fish screens
- ❖ Passage
- ❖ Relocation of diversions
- ❖ Channel and instream habitat modification
- ❖ Spawning gravel
- ❖ Meander belts
- ❖ Water acquisitions
- ❖ Water allocation and water rights adjudication

CEQA Requirements

Like NEPA, CEQA requires state, regional, and local agencies to prepare environmental impact assessments of proposed projects with significant environmental effects and to circulate these documents to other agencies and the public for comment before making decisions. If the action was not considered in a previously prepared CEQA document or does not fall under a Statutory or Categorical Exemption, an Initial Study is typically prepared to determine whether the project may have a significant environmental effect. If the project would not have a significant effect or if mitigation incorporated into the project description would reduce the project's effect to a less-than-significant level, a Negative Declaration or mitigated Negative Declaration is prepared; otherwise, an EIR is prepared. The draft EIR must be circulated for public and agency review and comment. After comments are received and responded to, the final EIR is prepared. CEQA requires the lead agency to make findings for all significant impacts identified in the EIR. The lead agency must adopt all mitigation to reduce environmental effects to a less-than-significant level unless the mitigation is infeasible or unavailable and there are overriding considerations that require the project to be approved.

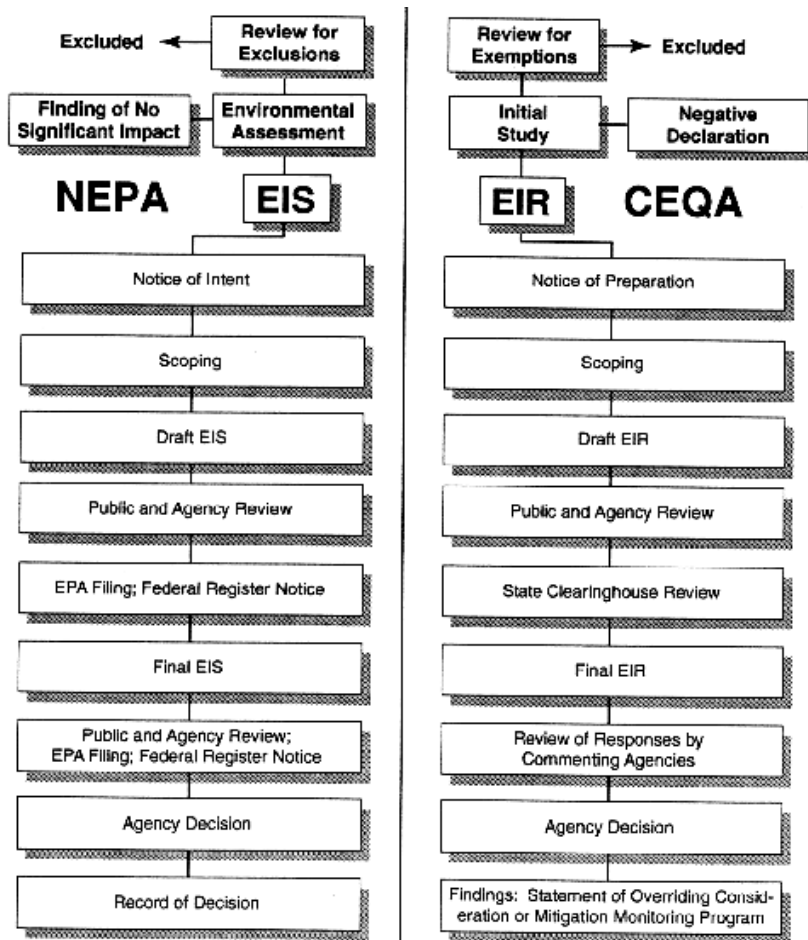
NEPA and CEQA processes and terminology are similar (see Figure 1). The differences between NEPA and CEQA are described in Appendix A.

Recommendations to Facilitate CEQA Compliance

- ❖ Use the CVPIA PEIS or CALFED EIS/EIR as a programmatic document for CEQA compliance, incorporating the appropriate mitigation strategies outlined in the Programmatic Documents.
- ❖ Prepare joint documents with a NEPA federal lead agency; prepare memorandum of understanding (MOU) between the agencies regarding responsibilities of agencies/schedule/assumptions regarding impact analysis.
- ❖ Prepare additional program-level analysis of the Restoration Plan; incorporate the relevant analyses (e.g. cumulative impact analysis) from the CVPIA PEIS or CALFED EIS/EIR by reference.
- ❖ Prepare combined project-level analysis of several of the specific Restoration Plan actions within the same watershed in a single CEQA document; incorporate the CVPIA PEIS, CALFED EIS/EIR, and other NEPA and CEQA documents by reference.
- ❖ Focus the project description of the Restoration Plan action to meet conditions of statutory or Categorical Exemption to avoid exceptions to the Categorical Exemption, rather than preparing an Initial Study/Negative Declaration or an EIR.
- ❖ Incorporate mitigation into the action description to prepare an Initial Study/Negative Declaration rather than an EIR.

See also Chapter 2 for more specific guidance on including CEQA compliance in an overall strategy for environmental compliance.

Figure 1. NEPA and CEQA: Parallel Processes



NEPA and CEQA Compliance

Identifying the Lead Agency

The lead agency under NEPA is the federal agency responsible for ensuring compliance with NEPA, and the lead agency under CEQA is the state or local agency responsible for ensuring compliance with CEQA. If more than one federal agency or more than one state or local agency is involved, the lead agency for NEPA and CEQA, is determined according to:

- ❖ Magnitude of involvement,
- ❖ Approval or disapproval authority over the proposed action,
- ❖ Expertise with regard to environmental effects,
- ❖ Duration of involvement, and
- ❖ Sequence of involvement.

Under NEPA, other federal agencies that have discretionary authority over some aspect of or interest in the project are considered "cooperating" agencies. Under CEQA, other state or local agencies having discretionary authority over some aspect of the project are considered "responsible" agencies.

During preliminary review of the proposed action, the lead agency must determine whether NEPA and CEQA apply to the activity being evaluated. As discussed in the following presentations, the agency must conduct a preliminary screening to determine whether the activity is considered a "project" under the definition of NEPA and CEQA, whether it falls under a specific exemption from NEPA and CEQA requirements, or whether preparation of further documentation is required and, if so, what type.

Program-Level NEPA and CEQA Compliance

When a federal or state agency proposes a broad policy-oriented action or project, NEPA and CEQA require that implications of overall policy decisions, alternatives to the action, and mitigation measures for any impacts be addressed in a programmatic environmental document (an EIS under NEPA, an EIR under CEQA, or a joint EIR/EIS). A programmatic environmental analysis allows agencies to evaluate the potential effects of a program as a whole and simplifies preparation of subsequent project-specific environmental documents. In this approach, known as "tiering," a first-tier document such as a programmatic EIR/EIS addresses the broad issues relating to a project. Additional environmental documents on project-specific impacts are prepared when necessary, thus avoiding duplicate considerations of broad policy decisions when future individual aspects of the program are under review. These second-tier documents must incorporate the programmatic EIR/EIS by reference, briefly summarizing pertinent discussions in the first-tier document and concentrating on site-specific issues.

Categorical Exclusions and Statutory and Categorical Exemptions

NEPA Exclusions

Each federal agency's NEPA regulations list actions that, when considered individually and cumulatively, do not have significant effects on the quality of the human environment and are categorically excluded from NEPA documentation. A federal lead agency is not required to prepare a detailed environmental review (an EA or an EIS) for NEPA compliance if an action qualifies for a Categorical Exclusion. However, if extraordinary circumstances exist, as defined by the federal agency's NEPA regulations, preparation of an EA and FONSI or EIS may be required. Although an EA and FONSI or EIS may not be required for a federal action because of a Categorical Exclusion, the action is not exempt from compliance with other pertinent federal laws such as the federal Endangered Species Act (ESA), the Fish and Wildlife Coordination Act (FWCA), and the National Historic Preservation Act (NHPA).

See page 2-27 in Chapter 2 for a description of Categorical Exclusions that may apply to Restoration Plan actions. See Appendix B for a Categorical Exclusion checklist.

CEQA Exemptions

The CEQA lead agency is not required to prepare a detailed environmental review (an Initial Study and either a Negative Declaration or EIR) for CEQA compliance if the action qualifies under a Statutory or Categorical Exemption. CEQA and the State CEQA Guidelines list Statutory Exemptions and classes of Categorical Exemptions that are exempt from the CEQA process. However, if certain circumstances apply to the proposed action (e.g. potential for significant impacts), as defined by CEQA and the guidelines, certain classes of Categorical Exemptions may not apply.

See page 2-40 in Chapter 2 for a discussion of exemptions that may apply to Restoration Plan actions. See Appendix B for a Categorical Exemption checklist.

Environmental Assessment and Initial Study

Unless a proposed action normally requires an EIR or EIS or it is clear that significant environmental impacts could result, the lead agency prepares an EA or Initial Study to determine whether the proposed action has the potential to cause significant environmental effects. An EA or Initial Study should include:

- ❖ A brief discussion of the proposed action;
- ❖ Environmental impacts of the proposed action;
- ❖ Alternatives to the proposed action (required in an EA only);
- ❖ A list of agencies, interest groups, and members of the public consulted; and
- ❖ Supporting technical data or appendices.

The EA or Initial Study should be concise to facilitate meaningful review and decision making and may be supplemented or revised if required. Typically, copies of the draft and final documents are provided to concerned agencies, interest groups, and interested individuals for coordination and review.

Mitigation to reduce impacts of a proposed action to a less-than-significant level may be incorporated in the project before the EA or Initial Study is issued to the public.

Based on the results of an EA or Initial Study, and using the information in a programmatic document when applicable, the lead agency decides whether it is necessary to prepare an EIS or EIR for implementation of individual components of a proposed action. If it is not necessary to prepare an EIS, the federal lead agency prepares a FONSI. If it is not necessary to prepare an EIR, the state or local lead agency prepares a Negative Declaration.

See Appendix B for an example of a joint Environmental Assessment/Initial Study.

FONSI and Negative Declaration

A FONSI or Negative Declaration should briefly present reasons why a proposed action does not have a significant impact on the quality of the human environment by referencing, not duplicating, the information included in the EA or Initial Study and any applicable programmatic document and state that an additional EIS or EIR is not required. A FONSI and a Negative Declaration must present all mitigation that has become part of the project.

See Appendix B for an example of a joint FONSI/Negative Declaration.

Draft EIS and EIR

If a project has the potential to cause a significant effect on the environment, the federal agency needs to prepare an EIS and the state or local agency needs to prepare an EIR. Following preparation of a programmatic EIR or EIS analyzing the effects of a broad program or series of actions, implementation of an individual Restoration Plan action may require preparation of an EIS, EIR, or joint EIR/EIS if the project-specific action:

- ❖ Was not adequately addressed in the programmatic EIR/EIS or was substantially changed since completion of the programmatic EIR/EIS;
- ❖ Cannot meet the conditions of NEPA's Categorical Exclusions or CEQA's Statutory or Categorical Exemptions; and
- ❖ Has the potential to cause a significant effect on the environment and no mitigation that reduces impacts is added to the project description before the environmental assessment or Initial Study is released for public review.

If an EIS is prepared, a notice of intent is published in the Federal Register and the scoping process begins. If an EIR is prepared, a notice of preparation should be sent to responsible and interested agencies and the public. The lead agency prepares the draft EIS or EIR, including information gained from the

scoping process and consultation with federal, state, and local agencies that have jurisdiction or special expertise. The EIS must disclose and discuss all major points of view on the environmental impacts of a reasonable range of alternatives. The EIR must include discussion of the environmental effects of the proposed project and an evaluation of a reasonable range of alternatives.

The lead agency must circulate the draft EIS or EIR for public and agency review and must obtain the comments of other federal or state and local agencies with jurisdiction over, or special expertise with regard to, the proposed action. Comments should also be requested from the project applicant (if not the lead agency), agencies requesting to be notified, Native American tribes, and the public.

Final EIS and EIR

A final EIS or EIR is prepared after comments on the draft document are received and reviewed. The final EIS or EIR must contain the lead agency's responses to all comments and must discuss any opposing views on substantive issues raised. The final EIS is circulated to federal agencies with jurisdiction or expertise, environmental regulatory agencies, the project applicant, persons requesting to be notified, and persons who submitted comments. The final EIR does not need to be circulated; however, the CEQA lead agency is required to send commenting agencies a copy of the draft responses prior to certifying the EIR.

Record of Decision and Findings

When the federal lead agency determines that the EIS meets the requirements of NEPA, it may adopt the EIS and approve the proposed project. The Record of Decision, a written public record explaining a particular course of action, is prepared by the federal lead agency. When the state or local lead agency determines that the EIR meets the requirements of CEQA, it certifies the EIR. When the state or local lead agency takes action on the project, it must make findings regarding the significant impacts in the EIR; adopt a mitigation monitoring or reporting program for the mitigation measures made a condition of project approval; and adopt a Statement of Overriding Considerations, if applicable, for the proposed project's significant and unavoidable impacts.

Guidance on NEPA and CEQA Compliance

The following individuals may be contacted for guidance on NEPA compliance:

- ❖ For coordination of USFWS internal procedures for sign-off of NEPA decision documents: *AFRP Program Manager*, Sacramento-San Joaquin Estuary Fishery Resource Office, 4001 N. Wilson Way, Stockton, CA 95205-2486, voice: (209) 946-6400, fax: (209) 946-6355
- ❖ For NEPA compliance issues for particular actions: *AFRP Assistant Program Manager* in the USFWS office at 4001 N. Wilson Way, Stockton, CA 95205-2486, (209) 946-6400, or *AFRP Habitat Restoration Coordinator*, Northern Central Valley Fish and Wildlife Office, 10950 Tyler Road, Red Bluff, CA 96080, (916) 527-3043
- ❖ For review of an action to determine the need for NEPA compliance: *Regional Environmental Coordinator* in Portland, Oregon, (503) 231-2068

- ❖ For specific questions about regulatory compliance requirements of AFRP Restoration Plan actions: *Environmental Solicitors* at Jones & Stokes Associates, (916) 737-3000
- ❖ For general questions on environmental regulations and permit processes: *Chief, Habitat Conservation Division* in the USFWS office at 3400 Cottage Way, Sacramento, CA 95825, (916) 414-6600

In addition to representatives of the appropriate state or local agencies, the following individuals may be contacted for guidance on CEQA compliance:

- ♦ *AFRP Assistant Program Manager* in the Stockton USFWS office (see above), (209) 946-6400
- ♦ Ken Bogdan or Tom Adams at Jones & Stokes Associates, (916) 737-3000

Excerpts from the USFWS NEPA Guidance and examples of NEPA and CEQA compliance documents are provided in Appendix B.

Federal Laws, Executive Orders, Administrative Policies, Implementing Regulations, and Other Authorities

Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act

Overview:

Section 404 of the Clean Water Act (33 USC 1344) requires that a Department of the Army permit be obtained from the U. S. Army Corps of Engineers (Corps) for the discharge of dredged or fill material into "waters of the United States," including wetlands. Section 10 of the Rivers and Harbors Act of 1899 (33 USC 403) prohibits the unauthorized obstruction or alteration of any navigable waters of the United States without a permit from the Corps. Where applicable, the Corps combines the permit requirements of Section 10 with those of Section 404 under one permit application.

Key Project Features/Issues Triggering Need For Compliance:

- ✓ *The action is located in waters of the United States, including wetlands, and/or the action is located in navigable waters of the United States, and:*
 - ♦ *The action is considered a discharge of dredged or fill material; or*
 - ♦ *The action would affect facilities designed, built, or managed by the Corps.*

Timing:

The Corps' goal is to reach a decision within 60 days to issue or deny a permit following a 30-day public notice period; however, complex circumstances may affect the schedule. Most applications involving public notices are completed within 4 months (see below for more information).

Application to Restoration Plan Actions

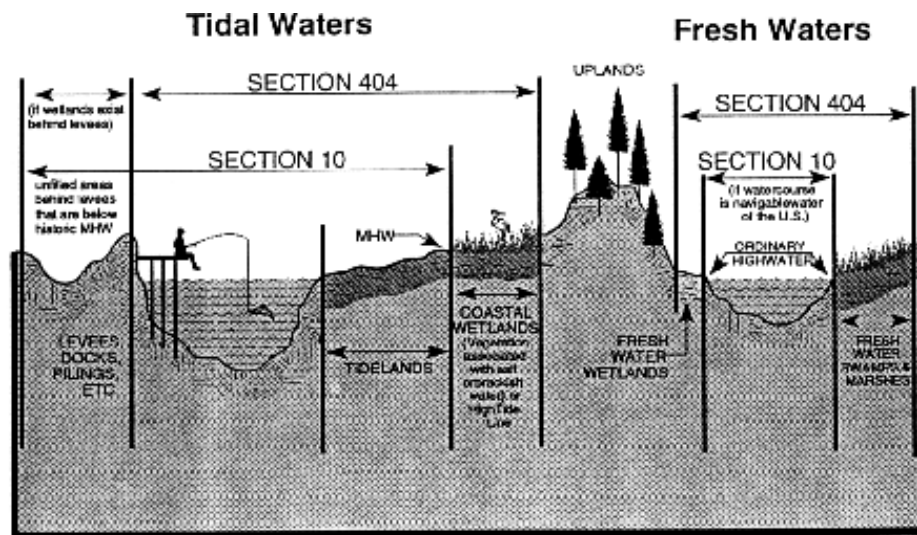
Restoration Plan actions in all categories except water acquisitions, water allocation and water rights adjudication, and evaluations - monitoring and research may require compliance with the Section 404 and Section 10 compliance process; actions in the following categories will most likely require compliance (see Table 3 in Chapter 3):

- ❖ Fish screens
- ❖ Passage
- ❖ Relocation of diversions
- ❖ Channel and instream habitat modification
- ❖ Spawning gravel
- ❖ Meander belts

Corps Jurisdiction under Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act

The Corps has jurisdictional authority to regulate all activities that dredge, dam, or divert navigable waters or that result in the deposit of dredged and fill material into waters of the United States, including, but not limited to, perennial and intermittent streams, lakes, ponds, and adjacent wetlands (refer to Figure 2).

Figure 2. U.S. Army Corps of Engineers Jurisdictional Boundaries in Waters of the United States



In 2001 the U.S. Supreme Court ruled that the Clean Water Act does not authorize the Corps to regulate so-called “isolated” waters and wetlands, which are located away from rivers, lakes, and other readily recognizable waters (*Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers*). The Corps had based its regulation on the use of such waters and wetlands by migratory birds, asserting the constitutional power to regulate interstate commerce. As a result, the Corps current position is that they will not assert jurisdiction over isolated waters that are both intrastate and non-navigable, where the sole basis available for asserting Clean Water Act jurisdiction rests on the “Migratory Bird Rule.” In

addition, if jurisdiction relies solely on the application of a connection with interstate commerce, Corps' field staff are directed to seek formal project-specific Headquarters approval prior to asserting jurisdiction.

Activities Regulated under Section 404 and Section 10

Types of activities that require permits from the Corps include the following:

- ❖ Construction or modification of levees, dams, and dikes in navigable waters of the United States.
- ❖ Other structures or work, including excavation, dredging, and/or disposal activities, in navigable waters of the United States.
- ❖ Activities that alter or modify the course, condition, location, or physical capacity of navigable waters of the United States.
- ❖ Discharges of dredged or fill material into waters of the United States.

Alternatives Analysis

The Corps reviews applications for permits in accordance with the U.S. Environmental Protection Agency's (EPA's) Section 404(b)(1) Guidelines, which require that "no discharge of dredged or fill materials shall be permitted if there is a practicable alternative to the proposed discharge which would have less adverse impact on the aquatic ecosystem, so long as the alternative doesn't have other significant adverse environmental consequences." The Corps must also determine that the project is not contrary to the public interest (33 CFR 323.6).

The Section 404(b)(1) Guidelines direct that, when the proposed activity is not water-dependent, a less-damaging practicable alternative is presumed to exist onsite or offsite. According to the Section 404(b)(1) Guidelines, the practicability of an alternative is a function of cost, technical, and logistical factors, including availability of the alternative site to the permit applicant at the time of market entry, in light of overall project purposes. The applicant bears the burden of demonstrating that no practicable alternative exists that will meet the project purpose.

Compliance with Other Federal Laws

To issue a permit under Section 404, the Corps must ensure that the discharge will not violate the state's water quality standards. Therefore, in California, the proponent of any activity that may result in a discharge to a surface water of the United States must obtain water quality certification or a waiver of certification from the California State Water Resources Control Board (SWRCB) pursuant to Section 401 of the Clean Water Act (Section 401 requirements are below under "Section 401 Certification" under "State Laws and Implementing Regulations"). Additionally, the Corps must comply with the requirements of Section 7 of the federal Endangered Species Act (ESA) and Section 106 of the National Historic Preservation Act (NHPA) (described below).

Section 404 Jurisdiction

Waters of the United States are broadly defined by 33 CFR Part 328.3(a) to include navigable waters, as regulated under Section 10 of the Rivers and Harbors Act, and others, as:

- ❖ All waters which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;
- ❖ All interstate waters including interstate adjacent wetlands;
- ❖ All waters such as intrastate lakes, rivers, streams (perennial and intermittent), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds, the use, degradation or destruction of which could affect interstate or foreign commerce, including any such waters:
 - ♦ which are or could be used by interstate or foreign travelers for recreational or other purposes; or
 - ♦ from which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or
 - ♦ which are used or could be used for industrial purpose by industries in interstate commerce;
- ❖ All impoundments of waters otherwise defined as waters of the United States;
- ❖ Tributaries of waters identified in this section above;
- ❖ The territorial seas; and
- ❖ Wetlands adjacent to waters (other than those that are themselves wetlands) identified in this section above.

Wetlands are further defined as "areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions."

Agricultural Land

The Natural Resources Conservation Service (NRCS) is responsible for verifying wetland delineations in compliance with Section 404 of the Clean Water Act on agricultural lands (e.g. cultivated cropland and pastureland). Because the Farm Bill of 1996 expanded the definition of agricultural lands to include rangeland, native pastureland, and other land used to support livestock production and tree farms, NRCS is in the process of developing and promulgating new guidelines for implementation of new Section 404 delineation requirements.

NRCS regulates agricultural activities affecting Section 404 jurisdictional waters of the United States, including wetlands, on agricultural lands under the Wetland Conservation provision (also known as "Swampbuster") of the 1985 Food Security Act (FSA); 1990 Food, Agriculture, Conservation, and Trade Act (FACTA); and the Farm Bill of 1996. The Swampbuster provision requires all agricultural producers to protect wetlands on the farms they own or operate if they want to be eligible for U.S. Department of Agriculture farm program benefits. NRCS defines agricultural land as land intensively used and managed for the production of food or fiber to the extent that natural vegetation has been removed and cannot be used in making a wetland determination (i.e. as to whether the area supports applicable hydrophytic

vegetation). Areas that meet this definition may include cropland, hayland, pastureland, rangelands, orchards, vineyards, and areas that support wetland crops (e.g. rice, taro, watercress, cranberries).

Restoration Plan actions that would potentially affect agricultural lands, such as temporary use, easements, or conversions, could be subject to compliance with Section 404 and/or Swampbuster provisions.

Section 10 Jurisdiction

Corps jurisdiction under the Rivers and Harbors Act of 1899 is limited to those activities affecting the navigable waters of the United States. Navigable waters of the United States are defined as those waters subject to the ebb and flow of the tide shoreward to the mean high-water mark and/or those that are presently used, have been used in the past, or may be susceptible to use to transport interstate or foreign commerce.

To a great extent, the regulatory authority of the Corps under the Rivers and Harbors Act of 1899 has been superseded by Section 404 of the Clean Water Act. The jurisdiction of the Corps under the Clean Water Act overlaps and extends beyond the geographic scope of its jurisdiction under the Rivers and Harbors Act (Figure 2).

Permits and Consultation

Permits Issued under Section 404 of the Clean Water Act

Introduction

Section 404 of the Clean Water Act authorizes the Corps to issue permits for discharges of dredged or fill material into waters of the United States. General permits may be issued for similar actions with similar environmental effects or individual permits may be issued for separate actions (permit requirements for Section 10 of the Rivers and Harbors Act of 1899 that vary from those issued under Section 404 are discussed at the end of this section).

Actions Considered "Discharge Activities"

Actions typically subject to Section 404 requirements are those that would take place in wetlands or channels that convey natural runoff, including intermittent streams, even if they have been realigned. Artificial channels that convey only irrigation water are usually not included. Within stream channels, a permit under Section 404 would be needed for any discharge activity (beyond those discharge activities considered "incidental fallback") below the ordinary high-water level, which is the water level at a flow equal to the mean annual flood. Examples of such discharge activities include excavation, mechanized vegetation removal, deep ripping, placement or alteration of structures that have the intended effect of functioning as a fill activity, or any discharge activity that would affect wetlands or the surface-water conveyance or capacity of a channel.

Activities Not Regulated under Section 404

Among the activities that are generally exempt from Section 404 permitting are maintenance of existing dams, reservoirs, dikes, and levees, and ongoing farming and silviculture activities. In addition,

responding to litigation regarding the Corps' regulation of excavation activities that involve only discharge activities considered "incidental fallback," the Corps has suspended enforcement of Section 404 permit requirements for certain excavation activities. Habitat Restoration Coordinators should contact the Corps to verify whether an activity is considered to be exempt or within the definition of "incidental fallback."

Nationwide Permits

Introduction. A Nationwide Permit is a type of General Permit that has been developed and adopted by the Corps, in cooperation with concerned agencies, to streamline the Section 404 process for those activities having minimal environmental impacts. A General Permit can be issued on a nationwide, statewide, or regional basis. Nationwide Permits, issued by the Corps on a national level, authorize certain activities that comply with general and specific conditions. Forty three Nationwide Permits have been established by the Corps in cooperation with concerned agencies. Typical processing time for a Nationwide Permit is 30 to 60 days.

Expiration Dates. The certain Nationwide Permits were revised for renewal, effective March 18, 2002, and will expire on March 19, 2007 (except Nationwide Permit 26, which expired on December 13, 1998).

Application to Restoration Plan Actions. Following are the Nationwide Permits that could be relevant to the Restoration Plan actions. Activities to which these permits apply are described in detail in the Corps' final notice issuing the Nationwide Permits (67 FR 2020). Appendix B includes an example of a "predischarge notification" (the former term for "preconstruction notification").

- ♦ NWP 2: Structures in Artificial Canals
- ♦ NWP 3: Maintenance
- ♦ NWP 4: Fish and Wildlife Harvesting, Enhancement, and Attraction Devices and Activities
- ♦ NWP 5: Scientific Measurement Devices**
- ♦ NWP 6: Survey Activities
- ♦ NWP 9: Structures in Fleeting and Anchorage Areas
- ♦ NWP 10: Mooring Buoys
- ♦ NWP 13: Bank Stabilization**
- ♦ NWP 14: Road Crossing**
- ♦ NWP 15: Fills at U.S. Coast Guard Approved Bridges
- ♦ NWP 16: Return Water from Upland Contained Disposal Areas
- ♦ NWP 17: Hydropower Projects*
- ♦ NWP 18: Minor Discharges (up to 25 cubic yards, affecting up to 1/10 acre)**

- ♦ NWP 19: Minor Dredging (up to 25 cubic yards)
- ♦ NWP 21: Surface Coal Mining Activities*
- ♦ NWP 23: Approved Categorical Exclusions
- ♦ NWP 25: Structural Discharges
- ♦ NWP 27: Wetland and Riparian Restoration and Creation Activities**
- ♦ NWP 28: Modification of Existing Marinas
- ♦ NWP 31: Maintenance of Flood Control Facilities*
- ♦ NWP 33: Temporary Construction, Access, and Dewatering*
- ♦ NWP 35: Maintenance Dredging of Existing Basins
- ♦ NWP 36: Boat Ramps
- ♦ NWP 37: Emergency Watershed Protection*
- ♦ NWP 40: Farm Buildings
- ♦ NWP 41: Reshaping Existing Drainage Ditches**

* *notice to the Corps is required*

** *notice to the Corps is required in certain circumstances*

The Nationwide Permits that may be the most relevant to specific Restoration Plan actions are listed below; because specific actions may not meet the detailed conditions for a particular Nationwide Permit, the Corps should always be consulted to determine whether any apply.

- ❖ *Nationwide Permit 4, Fish and Wildlife Harvesting, Enhancement, and Attraction Devices and Activities*, applies to harvesting devices and activities such as pound nets and duck blinds, and fish attraction devices such as open water fish concentrators. Installation of fish screens under a certain size may also be covered by this permit.
- ❖ *Nationwide Permit 13, Bank Stabilization*, applies to river and stream bank stabilization activities necessary to prevent erosion (see Appendix B for an example).
- ❖ *Nationwide Permit 14, Road Crossings*, applies to certain minor road crossings, including roads for temporary construction access, with culverts or bridges that affect less than 1/3 acre of waters of the United States, and no more than 200 linear feet of fill in wetland areas.
- ❖ *Nationwide Permit 27, Wetland and Riparian Restoration and Creation Activities*, allows discharge activities associated with the restoration of former nontidal wetlands and riparian areas on nonfederal lands in accordance with a binding agreement with the U.S. Fish and Wildlife

Service (USFWS) or NRCS, on any federal land, on reclaimed surface coal mined lands, or on any public or private land.

General Conditions. Nationwide Permits must comply with a set of general conditions, best management practices (BMPs), and construction practices to minimize adverse environmental impacts. Three of the general conditions require special attention:

- ❖ *Condition 4: Aquatic Life Movements.* Unless the activity's primary purpose is to impound water, no activity authorized under a Nationwide Permit may substantially disrupt the movement of those species of aquatic life indigenous to the water body, including those species that normally migrate through the area.
- ❖ *Condition 11: Endangered Species.* An activity under a Nationwide Permit must not jeopardize a federally listed threatened or endangered species. If the activity may affect a listed species or its habitat, the Corps must initiate and complete an endangered species consultation pursuant to Section 7 of the ESA. Once the Corps has successfully completed the consultation, it can allow the activity to proceed under a Nationwide Permit or may require an Individual Permit for the activity (see "Sections 7 and 10 of the Federal Endangered Species Act" below).
- ❖ *Condition 12: Historic Properties.* The permit applicant must notify the Corps if the proposed activity may adversely affect historic properties (e.g. archaeological sites, historic sites, historic structures) that are included, or eligible for listing, on the National Register of Historic Places. The Corps must provide the Advisory Council on Historic Preservation with an opportunity to comment on the proposed activity and must consider any recommendations made by the council. Significant unavoidable impacts on important cultural resources would preclude issuance of a permit (see "National Historic Preservation Act" below).

Once it is determined that the conditions of a Nationwide Permit are met, no application to the Corps is required; however, several Nationwide Permits require that the Corps be notified prior to project initiation (see list of Nationwide Permits above). For these Nationwide Permits, the Corps will issue confirmation that all conditions have been met. NEPA compliance for Corps involvement in a project authorized by a Nationwide Permit is completed at the time the permit is issued. Typically, the Corps will not require additional NEPA compliance for confirmation that an activity is permitted under a Nationwide Permit.

Regional Permits or Letters of Permission

The Corps district office with jurisdiction may determine that certain activities within certain geographic areas may have minimal effects on the environment, although the activities are not specifically covered by a Nationwide Permit.

Regional Permits. Regional Permits are a type of General Permit. A Regional Permit may be issued by a division or District Engineer for an individual activity if it has impacts that are individually and cumulatively minimal, it falls within one of the specific categories authorized by Regional Permits, and the action does not require further authorization by an Individual Permit. The Corps district will determine and add appropriate conditions to the Regional Permit to protect the public interest. When the Corps district determines on a case-by-case basis that the concerns for the aquatic environment so indicate, it may exercise discretionary authority to override the Regional Permit and require an individual application and review. A Regional Permit may be revoked by the Corps district if it is determined that it

is contrary to the public interest. Following revocation, applications for future activities in areas covered by the Regional Permit will be processed as applications for Individual Permits. No Regional Permit will be issued for a period of more than 5 years.

The Sacramento District of the Corps has issued a Regional Permit for levee maintenance within the Delta and another for emergency flood repair and protection.

Letters of Permission. Subject to the same compliance requirements of an individual permit (see below), Letters of Permission are authorized by Section 404 and may be issued through an abbreviated processing procedure that includes coordination with federal and state fish and wildlife agencies, as required by the Fish and Wildlife Coordination Act, and a public interest evaluation. Publication of an individual public notice may be required. Letters of Permission may be used:

- ❖ In those cases subject to Section 10 of the Rivers and Harbors Act of 1899 when, in the opinion of the district engineer, the proposed work would be minor, would not have significant individual or cumulative impacts on environmental values or the public interest, and is not likely to result in substantial controversy, and
- ❖ In those cases subject to Section 404 of the Clean Water Act after:
 - ♦ The District Engineer, through consultation with federal and state fish and wildlife agencies, the Regional Administrator, EPA, state water quality certifying agency (see the discussion of compliance with Section 401 of the Clean Water Act below), and, if appropriate, the state Coastal Zone Management Act agency develops a list of categories of activities proposed for authorization;
 - ♦ The District Engineer issues a public notice advertising the proposed list and procedures, requesting comments and offering an opportunity for public hearing; and
 - ♦ A Section 401 certification has been issued or waived and, if appropriate, Coastal Zone Management Act consistency concurrence obtained or presumed either on a generic or individual basis.

The Sacramento District of the Corps has proposed to issue Letters of Permission to authorize "certain fill activities . . . that have an overall minimal impact to the aquatic ecosystem" within the Sacramento District boundaries. The purpose of these Letters of Permission is "to provide an expedited permitting process for those applicants who perform effective pre-application coordination and formulate projects that comply with the Section 404(b)(1) Guidelines [and] other program objectives and propose effective mitigation for unavoidable impacts."

Standard Individual Permits

Projects proposed in waters of the United States that involve discharge activities and are not eligible for exemptions, a Nationwide Permit, or other General Permit require Standard Individual Permits. Standard Individual Permits are issued to a single entity (e.g. an agency, joint-power agency, individual, or company) to authorize specific activities.

Individual Permits require submission of an individual application and compliance with the Corps' formal review process. This process provides opportunities for public notice and comment; requires preparation of an alternatives analysis as required by EPA Section 404(b)(1) Guidelines and NEPA; and requires compliance with NEPA's environmental review process. The Corps' decision to issue an Individual Permit is based on an evaluation of probable impacts of the proposed activity, analyzed according to Section 404(b)(1) Guidelines, and the effect the proposed activity will have on the public interest. See Appendix B for an example of an Individual Permit application.

Where to Apply for Permits

Depending on the location of the specific Restoration Plan action, permit applications should be submitted to one of the three Corps district offices with regional responsibility (refer to Figure 3). Most actions will most likely be coordinated with the Sacramento District.

Sacramento District
Attn: CESPCK-CO-R
U.S. Army Corps of Engineers
1325 J Street
Sacramento, CA 95814

San Francisco District
Attn: CESPN-CO-R
U.S. Army Corps of Engineers
333 Market Street
San Francisco, CA 94105-2197

Los Angeles District
Attn: CESPL-CO-R
U.S. Army Corps of Engineers
911 Wilshire Boulevard
P.O. Box 532711
Los Angeles, CA 90053-2325

NRCS maintains several dozen local field offices throughout the state that may be contacted for local site-specific projects. Contact the main NRCS office in Davis, California, for a list of local field office telephone numbers.

NRCS Main State Office
430 G Street #4164
Davis, CA 95616-4155
530/792-5600

Figure 3. U.S. Army Corps of Engineers Districts



How to Apply for Permits

When to Contact the Corps. The regulatory branch of the Corps may be contacted at any time to answer questions about Corps jurisdiction over a project site or proposed activity. Although not required, a pre-application meeting with the Corps, EPA, and USFWS (and, as appropriate, NOAA Fisheries, DFG, other relevant state resource agencies, and local and regional agencies with authority over land use at the project location) is encouraged to allow the attending resource agencies to contribute information that may expedite the permit process. At this meeting, the project proponent may be informed of modification or mitigation features that may be required to be incorporated into the project design as part of the Corps' formal application process.

Application Information. The permit applicant should submit a completed ENG Form 4345, "Application for Department of the Army Permit," which requests the following information:

- ❖ A detailed description of the proposed action/activity, including the purpose, need, intended use (public, private, commercial, other), and type and approximate dimensions of facility, structures, fills, excavations (lengths, widths, heights, depths). If an activity will involve navigation, commercial, or recreational boating, the type of vessels that will use the facility and the facilities for handling wastes should be described. If an activity will involve the discharge of dredged or fill material, the type of material (e.g. rock, sand, gravel); composition and quantity of material (in cubic yards); and mode of transportation to and location of borrow or disposal sites should be described.
- ❖ The names and addresses of property owners whose property adjoins the affected water body or wetland and of other parties that may have a direct interest so that they may be notified of the proposed action and potential effects.
- ❖ Complete information on the location of the proposed action, including the tax assessor's description; street address, if applicable; political jurisdictions (nearby community, city, county); and name of water body, wetland, or other recognizable landmarks in sufficient detail to easily locate the site.
- ❖ Information on previous project authorizations, completions, or permits, including a list of all related applications submitted to other entities, approvals, certifications, and disapprovals received by federal, state, and local government agencies with jurisdiction.
- ❖ Names and addresses of the project applicant and authorized agent (if any) and beginning and end dates of the project. The signatures of applicants or authorized agents (Block 10 on ENG Form 4345) is understood to affirm that the applicant possesses the requisite property interest to undertake the proposed activity.
- ❖ The applicant must submit one set of 8½ by 11-inch original drawings or good-quality copies that show the location and character of the proposed activity, including a vicinity map with the name of the waterway, location of the action, political boundaries, roads, graphic scale, and north arrow; a plan view showing tidal waters, existing shorelines, water depths, principal dimensions, of any proposed structures, volume and type of fill, and identification of any wetlands (e.g. swamps, bogs, marshes); and an elevational or cross-sectional view of the proposed project.

Compliance with EPA's Section 404(b)(1) Guidelines. In addition to the basic permit application, supporting documentation requirements will be determined in consultation with the Corps for each permit action. In the Corps' decision to issue a Standard Individual Permit under Section 404, the Corps must document, in compliance with the requirement of EPA's Section 404(b)(1) Guidelines, that the permit is being issued in the absence of practicable alternatives to the proposed discharge that would have less adverse impacts on the aquatic ecosystem. The EPA guidelines direct that, when the proposed activity is not water-dependent, there is a presumption that a less damaging upland practicable alternative exists. According to EPA guidelines, the practicability of an alternative is a function of cost and technical and logistical factors, including availability to the project proponent at the time of market entry, in light of overall project purposes. The applicant bears the burden of demonstrating that no practicable alternatives exist that will meet the proposed purpose.

Integral to the process of project selection is conformance to the concept of sequencing. Procedurally, this is best articulated within the project purpose statement. The Section 404(b)(1) Guidelines and the Corps' and EPA's memorandum of agreement (MOA) on wetlands mitigation require that projects should avoid or minimize negative effects on wetlands. According to the MOA, the proper sequence of mitigation priority in project design is to:

- ❖ First, avoid adverse effects on wetlands;
- ❖ Second, if avoiding adverse effects is not practicable, minimize effects on wetlands to the extent practicable; and
- ❖ Third, compensate for those impacts on wetlands that are unavoidable.

If the discharge activities cannot avoid the jurisdictional areas, the project proponent should, according to EPA Section 404(b)(1) Guidelines and the MOA on wetlands mitigation, strive to minimize disturbance to "special aquatic sites" and amount of acreage affected within the jurisdictional boundaries.

The Corps also will be required to comply with NEPA and therefore may require that an environmental analysis accompany the application.

Permit Application Fee

Fees are required for most permits and are due when the permit is issued. If the Corps issues a permit, \$10 will be charged for a permit for a noncommercial activity and \$100 for a commercial or industrial activity. No fees are required for permits to government agencies or letters of permission, or for transferring a permit from one property owner to another.

Evaluation and Processing of Permit Applications

A typical processing procedure for a Standard Individual Permit is shown in Figure 4. The Corps reviews the completed ENG Form 4345 and supporting information to evaluate the proposed action and to determine the appropriate form of authorization (e.g. Standard Individual Permit or General Permit). The Corps will begin to process the application on receipt of all required information.

The Corps' decision to grant or deny a permit is based on consideration of the proposed action's intended use and probable impacts on resource protection and conservation, economics, wetlands, fish and wildlife

values, flood hazards, navigation, water quality, and the needs and welfare of the people. The following general criteria are considered in the evaluation of each application:

- ❖ The relative public and private need for the proposed structures, actions, or work.
- ❖ Consideration of whether a proposed action is dependent on being located in, or in proximity to, the aquatic environment and whether practicable alternative sites are available (permit applicants must provide sufficient information on the need to locate a proposed action in navigable waters, marine, estuarine, and other wetlands and must provide data to evaluate the availability of practicable alternative sites).
- ❖ Where there are unresolved conflicts regarding resource use, the practicability of using reasonable alternative locations and methods to accomplish the objective of the proposed action.
- ❖ The extent and permanence of the beneficial and/or detrimental effects that the proposed action may have on public and private uses to which the area is suited.

As stated previously, projects involving the discharge of dredged or fill material into waters of the United States must comply with EPA's Section 404(b)(1) Guidelines, which restrict discharges into special aquatic sites when there are less environmentally damaging practicable alternatives (such as discharges in uplands where no significant adverse effects on waters of the United States could occur). Reasonable and practicable mitigation of unavoidable impacts will be required and must be acceptable to concerned agencies. A permit will be granted unless the proposed action is found to be contrary to the public interest or fails to comply with EPA guidelines or other environmental law requirements.

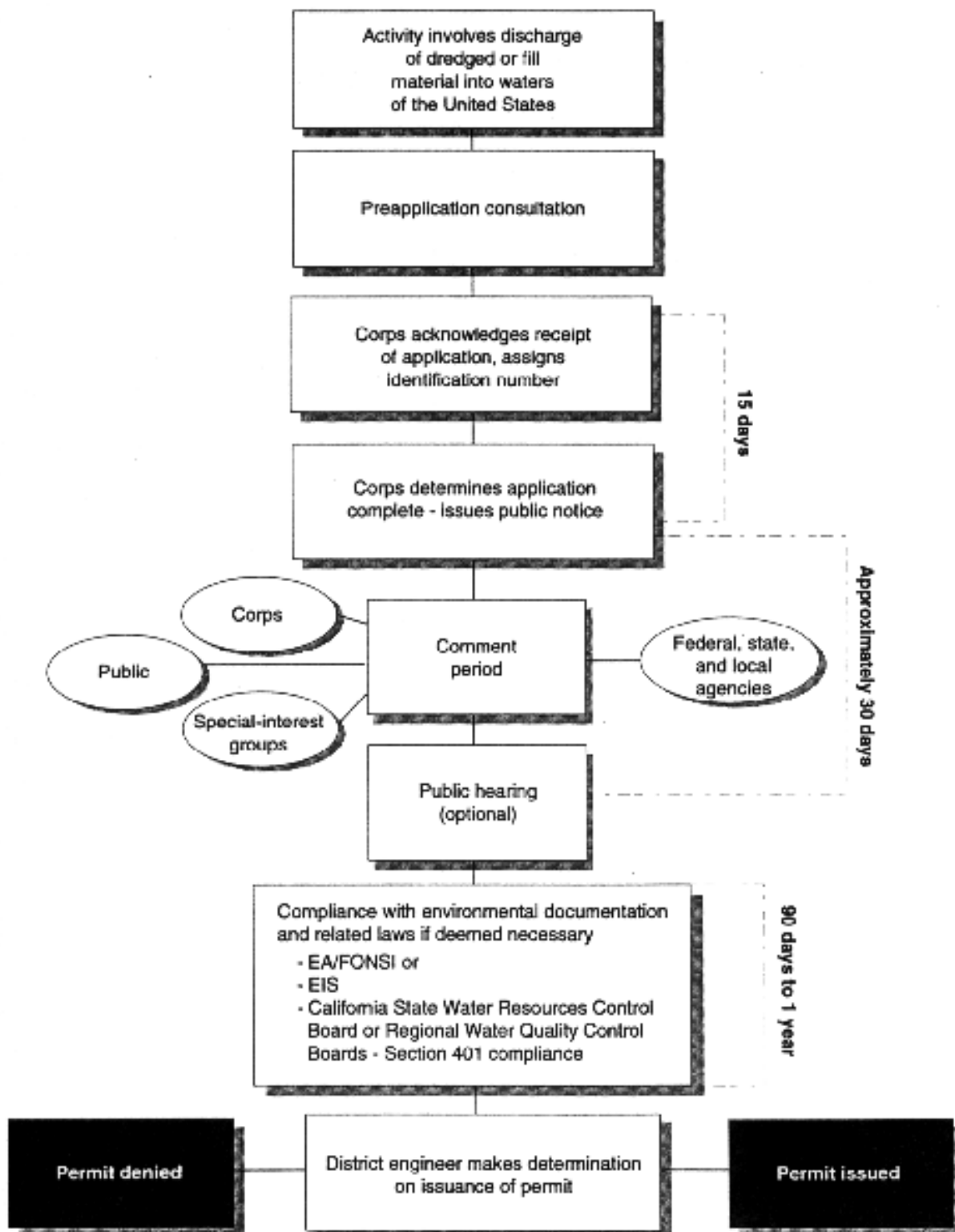
The Corps is required to participate in the NEPA process as a lead or cooperating agency. All permit decisions of the Corps require compliance with federal laws such as the ESA, the Fish and Wildlife Coordination Act (FWCA), Section 401 of the Clean Water Act, and the Coastal Zone Management Act.

After the Corps deems a permit application to be complete, it prepares and circulates (for 30 days) a public notice to inform government agencies, individuals, and special interest groups of proposed project actions. If the Corps receives no objections to a proposed project action and no significant impacts on the human environment are expected, the District Engineer may issue a permit within 30 to 90 days. If objections are raised, but concerns are resolved and no significant impacts are expected, a permit decision will most likely be made within 90 to 120 days and, if the Corps is the lead agency for NEPA compliance, will include preparation and processing of an EA and FONSI. However, if the proposed project action could potentially result in significant environmental effects, the Corps may require preparation and processing of an EIS, which may take a year or more, depending on project-specific issues and impacts.

Although the Corps' goal is to reach a decision within 60 days to issue or deny a permit, complex activities, issues, or legal requirements may affect the schedule. According to the Corps, most applications involving public notices are completed within 4 months.

Permit holders must follow the terms and conditions identified in the permit. Violations may result in civil and criminal court action and removal of structures and materials.

Figure 4. U.S. Army Corps of Engineers Standard Individual Permit ENG 4345 Process



Permits Issued under Section 10 of the Rivers and Harbors Act

Proposed actions to construct or modify structures in or affecting navigable waters of the United States require authorization under Section 10 of the Rivers and Harbors Act of 1899. Authorization under Section 10 is typically required for actions involving any canal or artificial waterway proposed to be connected to navigable waters or affecting navigable waters during construction or operation in a manner that alters the course, location, condition, or capacity of these waters. Proposed actions involving tunneling or boring under navigable waters also require authorization under Section 10.

Section 10 and Section 404 permit processes and issuance generally occur concurrently. Corps permit authority under the Rivers and Harbors Act of 1899, however, is not subject to EPA oversight or any other restrictions specific to the Clean Water Act, and, in some cases--such as with certain exemptions under the Clean Water Act--the Rivers and Harbors Act alone will apply.

Recommendations to Facilitate Environmental Review

- ❖ Start early to survey for Corps jurisdictional sites.
- ❖ Contact the Corps early; request a preapplication meeting.
- ❖ Design the project description to avoid waters of the United States, including wetlands.
- ❖ Minimize activities in waters of the United States, including wetlands, that could be considered a discharge of dredged or fill material.
- ❖ Use mitigation from the CVPIA PEIS and other NEPA and CEQA documents to satisfy Corps mitigation requirements.
- ❖ Incorporate Corps mitigation requirements when preparing a NEPA or CEQA document.
- ❖ Develop the project description to meet the conditions of Nationwide Permits; if a Nationwide Permit is the only federal authority, no additional NEPA compliance is necessary.
- ❖ Develop a specific regional General Permit with the Sacramento District of Corps.
- ❖ Develop a process for Letters of Permission with the Sacramento District of the Corps.
- ❖ If an Individual Permit is required:
 - ♦ Tier off of the alternatives discussion in the CVPIA PEIS for assessment of offsite alternatives;
 - ♦ Factor the Corps' alternatives analysis requirements into a NEPA or CEQA document;
 - ♦ Have a clear definition of the purpose and need for the Restoration Plan action; and

- ♦ Document a reasonable range of alternatives taking in factors of cost, feasibility, and logistics.
- ❖ Document compliance with the ESA, Section 401 of the Clean Water Act, and Section 106 of the NHPA.

Authorities

- ♦ U.S. Army Corps of Engineers, Engineering Pamphlet 1145-2-1, Regulatory Program, Applicant Information
- ♦ 33 CFR Parts 320 through 330 (regulatory programs of the Corps)
- ♦ 33 CFR Parts 323 and 328/40 CFR Part 110, et al. (Clean Water Act, 404 Regulatory programs)
- ♦ 33 CFR Part 325 (processing of Department of the Army permits)
- ♦ 33 CFR 328.3(a) (defines "navigable water" and other "waters of the United States")
- ♦ 33 CFR 328.3(b) (defines "wetlands" in the definition of "waters of the United States")
- ♦ 33 CFR Part 330 (Nationwide Permit Program regulations)
- ♦ 33 CFR 330.5(b) (Nationwide Permit conditions)
- ♦ 33 CFR 330.6 (Specifies best management/ construction practices to minimize adverse impacts)
- ♦ 40 CFR Part 230 (EPA Section 404[b][1] Guidelines for specification of disposal sites for dredged or fill material)
- ♦ 33 USC 403 (Rivers and Harbors Act of 1899, including Section 10)
- ♦ 33 USC 1344 (Sections 404 and 301, Clean Water Act)
- ♦ Letter of Advice to Permit Applicants, Minimum Standards for Acceptance of Preliminary Wetland Delineations, from the Chief of Sacramento District Regulatory Section (October 1994)
- ♦ Food Security Act of 1985 (Swampbuster provision)
- ♦ Food, Agriculture, Conservation, and Trade Act (FACTA) of 1990
- ♦ USDA publication, 1996 Farm Bill Conservation Provisions Summary, April 1996
- ♦ USDA Program Aid 1546, Wetlands and Agriculture: Section 404 of the Clean Water Act and Swampbuster in the Food Security Act

Sections 7 and 10 of the Federal Endangered Species Act

Overview

Section 7 of the Endangered Species Act of 1973 (16 USC 1531 et seq.) (ESA), as amended, requires federal agencies, in consultation with the U.S. Fish and Wildlife Service (USFWS) and National Marine Fisheries Service (NOAA Fisheries), to ensure that their actions do not jeopardize the continued existence of endangered or threatened species or result in the destruction or adverse modification of the critical habitat of these species. Section 10 of the ESA applies to those projects with no federal involvement that require an "incidental take" permit.

Key Project Features/Issues Triggering Need For Compliance

- ✓ *The action is considered a major construction activity and species listed as threatened or endangered under the federal Endangered Species Act (ESA) may be found in the project area; the action may affect the listed species (Section 7)*
- ✓ *The action may result in the "take" of a species listed as threatened or endangered under the ESA (Section 7 or 10)*

Timing

USFWS and/or NOAA Fisheries must prepare a Biological Opinion within 135 days of beginning formal consultation (see additional information below).

Application to Restoration Plan Actions

It is assumed that there will be federal involvement in most, if not all, of the Restoration Plan actions. Therefore, all categories of actions may require compliance with Section 7 of the ESA.

If there is no federal involvement, the following actions are most likely to require compliance with Section 10 because they could involve the take of listed species (see Table 3 in Chapter 3):

- ❖ Fish screens
- ❖ Passage
- ❖ Relocation of diversions
- ❖ Channel and instream habitat modification
- ❖ Spawning gravel

- ❖ Riparian habitat
- ❖ Meander belts
- ❖ Facilities management

The ESA recognizes the value to the nation of species in danger of or threatened with extinction. The act requires federal agencies to conserve these species and their habitats and ranges to the extent practicable. Section 4 of the ESA provides a listing process for species considered "endangered" (in danger of becoming extinct) or "threatened" (threatened to become endangered). The Secretary of Commerce, acting through NOAA Fisheries, is involved for projects that may affect marine or anadromous fish species listed under the ESA. All other species listed under the ESA are under USFWS jurisdiction.

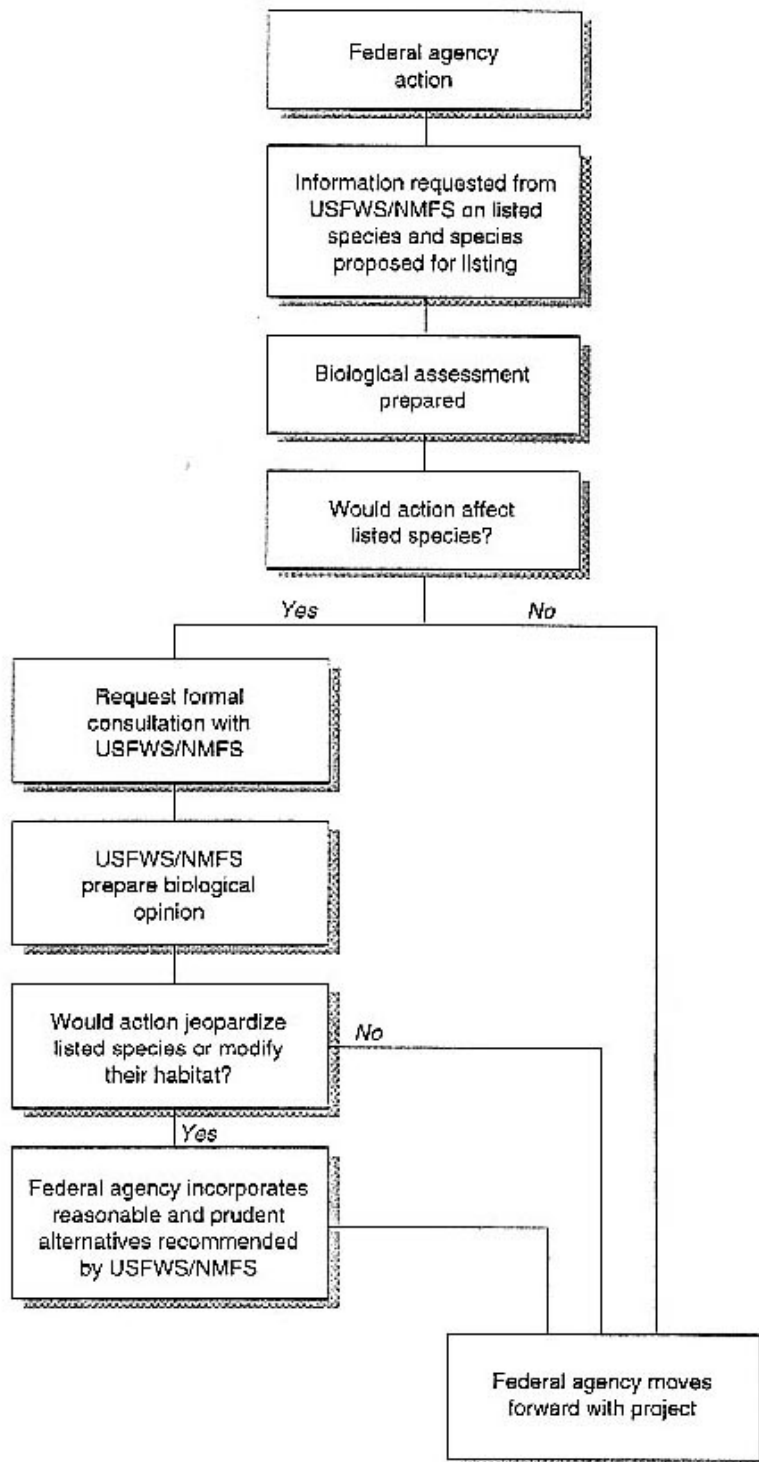
Section 7 of the ESA requires all federal agencies, in consultation with the Secretaries of the Interior and Commerce (acting through USFWS and NOAA Fisheries, respectively), to ensure that their actions do not jeopardize the continued existence of species listed as endangered or threatened and protected or result in the destruction or adverse modification of the critical habitat of these species. Section 9 of the ESA prohibits take of a listed species. Section 9 compliance is applicable if the proposed action would result in the take of any listed threatened (if not subject to special rule) or endangered fish or wildlife species and such take is not authorized in a Biological Opinion issued by USFWS or NOAA Fisheries. Section 10 of the ESA authorizes the conditions for USFWS or NOAA Fisheries to issue a permit for incidental take of a listed species when there is no other federal agency involved.

Permits and Consultation

The required steps in the Section 7 consultation process are as follows (see Figure 5):

- ❖ The federal action is considered a major construction activity.
- ❖ Federal agencies request information from USFWS and NOAA Fisheries on the existence in a project area of listed species or species proposed for listing.
- ❖ Following receipt of the USFWS/NOAA Fisheries response to this request, agencies generally prepare a biological assessment to determine whether any listed species or species proposed for listing are likely to be affected by a proposed action.
- ❖ Agencies initiate formal consultation with USFWS and NOAA Fisheries and submit the biological assessment if the proposed action may affect listed species.

Figure 5. Consultation under Section 7 of the Endangered Species Act



- ❖ USFWS and NOAA Fisheries prepare a Biological Opinion to determine whether the action would jeopardize the continued existence of listed species or adversely modify their critical habitat.
- ❖ If a finding of jeopardy or adverse modifications is made in the Biological Opinion, USFWS and NOAA Fisheries recommend reasonable and prudent alternatives that would avoid jeopardy and the federal agency must modify project approval to ensure that listed species are not jeopardized and that their critical habitat is not adversely modified (unless an exemption from this requirement is granted).

The procedures and steps discussed below are required to achieve compliance with Sections 7, 9, and 10 of the ESA.

During informal consultation, the involved federal agency or its representative should request information from USFWS and NOAA Fisheries on the existence of any listed species within a proposed project area. Following receipt of this information, if a listed species could be present in the project area, the federal agency must prepare a biological assessment to determine whether any species listed or proposed for listing is likely to be affected by a proposed action. The biological assessment evaluates potential direct, indirect, and cumulative effects of the proposed federal action on the listed species that may be present in the project area. The biological assessment is submitted to USFWS and/or NOAA Fisheries for review, and USFWS and NOAA Fisheries must state whether they concur with the findings.

If any listed species or its critical habitat may be adversely affected by a proposed project, the federal agency must request formal Section 7 consultation with the appropriate local Endangered Species Office of USFWS or with NOAA Fisheries. The formal consultation must conclude within 90 days of the request for consultation being submitted to USFWS and/or NOAA Fisheries. During consultation, the biological assessment findings are reviewed and discussions take place to modify the proposed action's features, designs, mitigation measures, and management plans to protect listed species while satisfying project objectives to the extent practicable. Within 135 days of beginning formal consultation, USFWS and/or NOAA Fisheries must prepare a Biological Opinion to determine whether the proposed action would jeopardize the continued existence of listed species or adversely modify their critical habitats. If USFWS or NOAA Fisheries is not satisfied that mitigation measures or alternatives are sufficient to protect a species, it may issue a "jeopardy opinion" concluding that a proposed action will jeopardize the continued existence of a species. Incidental take of listed threatened or endangered species that would otherwise be prohibited under Section 9 may be authorized with proposed conditions by USFWS and/or NOAA Fisheries in a Biological Opinion if the action would not jeopardize the continued existence of a listed species.

Section 9 of the ESA makes it unlawful for any person to take individuals of a federally listed animal species without specific exemption. As defined by the ESA, "take" means "to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct." "Harm" refers to acts that injure a listed species, including habitat modification. A "person" is "an individual, corporation, partnership, trust, association, or any other private entity; or officer, employee, agent, department, or instrumentality of the federal government, of any state or political subdivision thereof, or of any foreign government." Section 11 of the ESA prescribes civil penalties of up to \$10,000 per violation and criminal penalties of up to \$20,000 or imprisonment for up to 1 year, or both, per violation for knowingly violating any provision of the ESA.

Those projects with no federal agency involvement and therefore no procedure to receive an incidental take statement in a Section 7 Biological Opinion may be authorized by USFWS or NOAA Fisheries for the incidental take, as provided by Section 10 of the ESA. USFWS or NOAA Fisheries may issue a Section 10(a) permit if, after public comment on the permit application and the related conservation plan, it determines that:

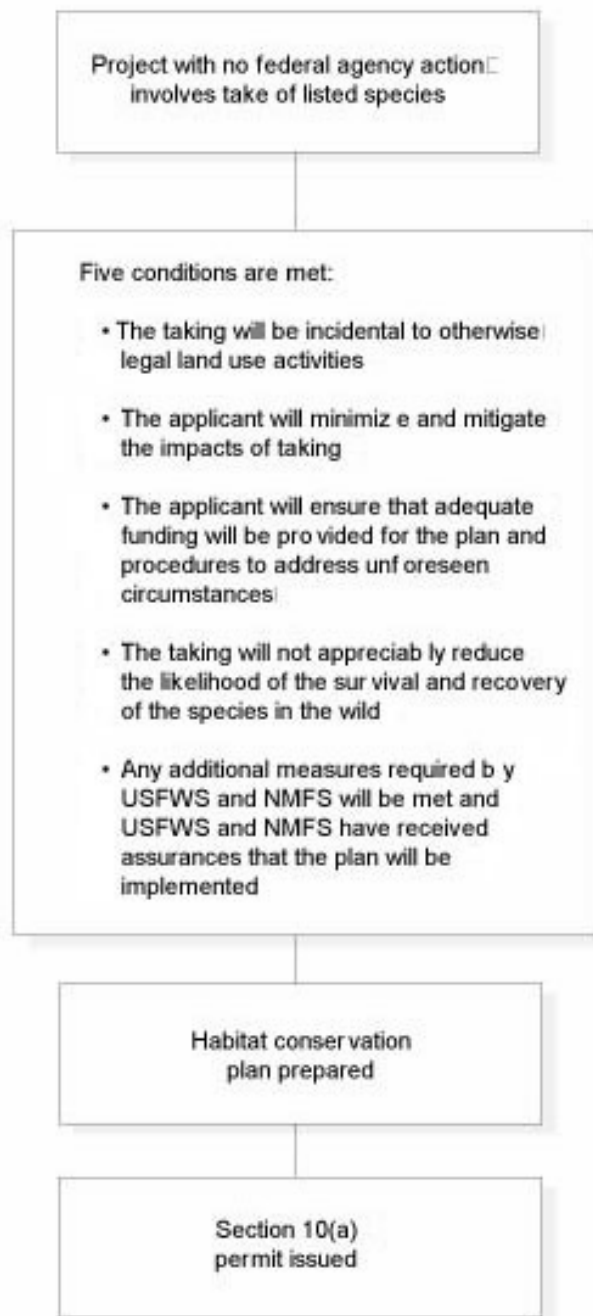
- ❖ The taking will be incidental to otherwise legal land use activities;
- ❖ The applicant will, to the maximum extent practicable, minimize and mitigate the impacts of such taking;
- ❖ The applicant will ensure that adequate funding for the plan and procedures to deal with unforeseen circumstances will be provided;
- ❖ The taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild; and
- ❖ The additional measures required by USFWS and NOAA Fisheries, if any, will be met, and USFWS and NOAA Fisheries have received assurances that the plan will be implemented.

Statutory requirements that must be met to secure an incidental take permit are described in Section 10(a). Issuance of a Section 10(a) permit is contingent on development of a satisfactory habitat conservation plan (HCP) for the affected listed species. The plan must specify:

- ❖ The impact that will most likely result from the taking;
- ❖ What steps the applicant will take to minimize and mitigate such impacts, and funding that will be available to implement such steps;
- ❖ What alternative actions to such taking the applicant considered and the reasons that such alternatives are not selected; and
- ❖ Such other measures that USFWS and NOAA Fisheries may require as necessary or appropriate for the purpose of the plan.

All affected property owners or lessees that are a party to an approved HCP would be authorized, on the issuance and pursuant to the terms and conditions of the Section 10(a) permit, to take the designated threatened or endangered species incidental to otherwise lawful activities. USFWS or NOAA Fisheries can revoke a permit issued pursuant to Section 10(a) if it finds that the permittee is not complying with the terms and conditions of the permit. The application process for a Section 10(a) permit is shown in Figure 6.

Figure 6. Take Permit under Section 10 of the Endangered Species Act



Candidate species or species proposed for listing are not afforded legal protection under Section 9, and incidental take permit applicants are not required to consider them in HCPs prepared pursuant to Section 10(a). However, applicants for a Section 10(a) permit will benefit from such consideration if any of the candidates addressed in an HCP are subsequently listed during the life of the permit.

Tiered Project-Level Compliance: Action Specific Implementation Plans (ASIP)

An ASIP is an environmental review documented created for the CALFED Multi-Species Conservation Strategy (MSCS) that incorporates the informational requirements of FESA, California ESA, and NCCPA in one format. An ASIP tiers from the CALFED program-level compliance documents and explains how a CALFED action implements and adheres to the programmatic conservation strategy described in the MSCS. Under FESA, project proponents may use ASIPs to obtain Section 10 incidental take permits for CALFED actions in certain circumstances. Under the California ESA and the NCCPA, ASIPs serve as section 2081 authorization and project-level NCCPs, respectively. USFWS, NOAA Fisheries, and DFG assist and advise lead agencies/project proponents for CALFED actions during the preparation of ASIPs and coordinate their comments regarding each completed ASIP. These agencies also ensure that the requirements for compliance with FESA, California ESA, and NCCPA are consistent and are not duplicative.

CALFED projects are required to prepare an ASIP and therefore, if a Restoration Action qualifies as a CALFED project, i.e. receives funding from CALFED, an ASIP must be prepared (see *CALFED Bay-Delta Program, Guide to Regulatory Compliance for Implementing CALFED Actions, Vol. 1 and 2*).

Where to Apply

Applicants should contact the following offices:

U.S. Fish and Wildlife Service
Endangered Species Division
2800 Cottage Way, Room W-2605
Sacramento, CA 95825-6340
916/414-6600

National Marine Fisheries Service
777 Sonoma Ave., Room 325
Santa Rosa, CA 95404
707/575-6052

Recommendations to Facilitate Environmental Review

- ❖ Use California Department of Fish and Game's (DFG's) Natural Diversity Data Base for an initial check for listed species.
- ❖ Start early to survey for listed species and their habitat using survey protocols published by USFWS and NOAA Fisheries.
- ❖ Design the project description to avoid listed species habitat.
- ❖ Use mitigation from the CVPIA PEIS and other NEPA and CEQA documents to satisfy mitigation requirements for listed species.

- ❖ Factor in mitigation requirements for listed species when preparing a NEPA or CEQA document.
- ❖ Tier off other agency compliance documents (including biological assessments, Biological Opinions, HCPs, and DFG's natural communities conservation plans [NCCPs]) for similar actions affecting the same listed species.
- ❖ Obtain incidental take permission from USFWS or NOAA Fisheries through Section 7 consultation rather than through Section 10.
- ❖ If obtaining take authorization under Section 10, coordinate internal Section 7 consultation and NEPA compliance.

Authorities

- ♦ 50 CFR 402-453 (USFWS and NOAA Fisheries Implementing Regulations)
- ♦ 16 USC 1531-1543 (Endangered Species Act of 1973, as amended)

Fish and Wildlife Coordination Act

Overview:

The Fish and Wildlife Coordination Act (FWCA) (16 USC 661 et seq.) requires federal agencies to consult with U.S. Fish and Wildlife Service (USFWS), National Marine Fisheries Service (NOAA Fisheries), and state fish and wildlife resource agency before undertaking or approving water projects that control or modify surface water.

Key Project Features/Issues Triggering Need For Compliance:

- ✓ *The action is considered a federal agency proposal and proposes to control or modify surface water*

Timing:

The timeline is consistent with that of the NEPA process.

Application to Restoration Plan Actions

It is assumed that there will be federal involvement in most, if not all, of the Restoration Plan actions. Those actions with federal involvement that would include control or modification of surface water will be required to comply with the FWCA process. All categories except land acquisition and water acquisitions, include actions that may meet these criteria; actions in the following categories are most likely to require compliance (see Table 3 in Chapter 3):

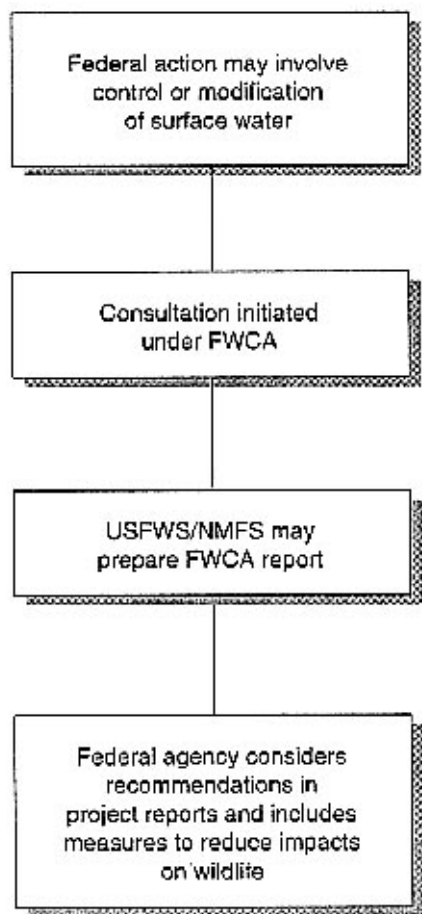
- ❖ Fish screens
- ❖ Passage
- ❖ Relocation of diversions
- ❖ Channel and instream habitat modification
- ❖ Spawning gravel
- ❖ Meander belts
- ❖ Facilities management

Coordination under the FWCA is intended to promote conservation of fish and wildlife resources by preventing their loss or damage and to provide for development and improvement of fish and wildlife resources in connection with water projects. Federal agencies undertaking water projects are required to fully consider recommendations made by USFWS, NOAA Fisheries, and the state fish and wildlife

resource agency in project reports, such as NEPA and CEQA documents, and include measures to reduce impacts on wildlife in project plans.

Restoration Plan action coordinators may be required to prepare an FWCA report with input from California Department of Fish and Game (DFG). This report should include assessment of the impacts of the proposed action on preservation, conservation, and enhancement of fish and wildlife resources. The report should also include recommendations for preserving, mitigating losses of, and enhancing affected resources. The FWCA report is a separate analysis of species of concern to USFWS and the state fish and wildlife resource agency and does not replace the analysis required by Section 7 of the ESA. Figure 7 shows the FWCA coordination process.

Figure 7. Coordination under the Fish and Wildlife Coordination Act



Permits and Consultation

No application is necessary for coordination under the FWCA. FWCA coordination is typically incorporated into the NEPA process. Appendix B includes a sample FWCA report.

Recommendations to Facilitate Environmental Review

- ❖ Address USFWS, NOAA Fisheries, and DFG concerns through a NEPA document, thus avoiding preparation of a separate FWCA report.
- ❖ Use mitigation from the CVPIA PEIS and other NEPA and CEQA documents to satisfy mitigation requirements for species of concern.
- ❖ Factor in mitigation for effects on species of concern when preparing a NEPA or CEQA document.

Authorities

- ♦ 16 USC 661-666c (Fish and Wildlife Coordination Act of 1934, as amended)

National Historic Preservation Act

Overview:

Section 106 of the National Historic Preservation Act (NHPA) (16 USC 470 et seq.) requires federal agencies to evaluate the effects of federal undertakings on historical, archaeological, and cultural resources.

Key Project Features/Issues Triggering Need For Compliance:

- ✓ *The action is considered a federal agency proposal and occurs in an area where properties are listed, or are eligible for listing, on the National Register of Historic Places (NRHP)*
-

Application to Restoration Plan Actions

It is assumed that there will be federal involvement in most, if not all, of the Restoration Plan actions. Actions in all categories except land acquisition and water acquisitions are likely to require compliance with the NHPA. Actions in the following categories are most likely to require compliance (see Table 3 in Chapter 3):

- ❖ Fish screens
- ❖ Passage
- ❖ Relocation of diversions
- ❖ Channel and instream habitat modification
- ❖ Spawning gravel
- ❖ Meander belts

Under Section 106 of the NHPA, federal agencies are required to:

- ❖ Identify historical or archaeological properties near proposed project sites, including properties listed on the NRHP and those properties that the agency and the State Historic Preservation Officer (SHPO) agree are eligible for listing on the NRHP, and
- ❖ If the project is determined to have an adverse effect on NRHP-listed properties or those eligible for listing on the NRHP, to consult with the SHPO and the Advisory Council on Historic Preservation (ACHP) to develop alternatives or mitigation measures to allow the project to proceed.

The listing of federal, state, and local historic properties on the NRHP is maintained by NPS consistent with the National Historic Preservation Act and related law (see "State Historic Preservation Officer Consultation under Section 106 of the National Historic Preservation Act" below).

Permits and Consultation

See "State Historic Preservation Officer Consultation under Section 106 of the National Historic Preservation Act" below.

Recommendations to Facilitate Environmental Review

See "State Historic Preservation Officer Consultation under Section 106 of the National Historic Preservation Act" below.

Authorities

- ♦ 36 CFR Parts 60 and 63 (eligibility of properties for listing on the NRHP)
- ♦ 36 CFR Part 62 (identification and listing on National Registry of Natural Landmarks)

National Wild and Scenic Rivers Act

Overview:

The National Wild and Scenic Rivers System is administered jointly by the National Park Service (NPS) and the U.S. Forest Service (USFS). Proposed actions on streams in the system are subject as appropriate to consultation, review of plans and environmental impact assessments, and approval by either agency (the American, Merced, and Tuolumne rivers have reaches designated as wild and scenic).

Key Project Features/Issues Triggering Need For Compliance:

- ✓ *The action is considered a federal agency proposal and affects a river within the National Wild and Scenic Rivers system*
-

Application to Restoration Plan Actions

It is assumed that there will be federal involvement in most, if not all, of the Restoration Plan actions. Those actions with federal involvement that would affect a river within the National Wild and Scenic Rivers System (the American, Merced, or Tuolumne) will be required to comply with the National Wild and Scenic Rivers Act process. Actions in the following categories may be implemented on these rivers and may require compliance (see Table 3 in Chapter 3):

- ❖ Channel and instream habitat modification
- ❖ Spawning gravel
- ❖ Riparian habitat
- ❖ Watershed management
- ❖ Flow management
- ❖ Facilities management
- ❖ Water allocation and water rights adjudication

The Wild and Scenic Rivers Act established the National Wild and Scenic Rivers System, administered jointly by the USFS and NPS, to protect the environmental values of free-flowing streams from degradation resulting from effects of activities, including those associated with water resource projects. Discharges into streams, impoundments, diversions, channel alterations, and other measures can alter the stream dimensions, discharge, and velocity and thereby modify the free-flowing character of a stream, resulting in the loss or diminution of its environmental values. The power of federal agencies to condemn land for protection of eligible rivers is limited if the land is zoned by a local jurisdiction and the Wild and Scenic Rivers Act cannot affect any existing private rights or contracts without consent of the involved

private party. Under the act, rivers can be designated for protection by the U.S. Congress or by a state legislative body.

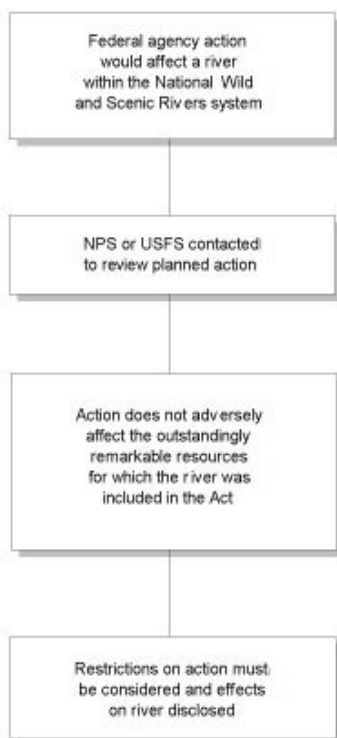
Once a river is designated, the Department of the Interior develops a comprehensive management plan for protecting the river and its environs. Under the Federal Powers Act, federal agencies are prohibited from licensing any water project on or directly affecting a designated component of the National Wild and Scenic Rivers System and their authority to license or aid development on potential additions to designated areas is limited.

Of those rivers protected under the National Wild and Scenic Rivers Act, the American, Merced, and Tuolumne rivers may be affected by Restoration Plan actions. However, the designated reach on the Merced River, from El Portal to Lake McClure, and the Tuolumne River, from Cherry Lake to Lumpston Bridge toward Ferry Bridge, are above Lake McClure and New Don Pedro reservoirs. The restoration actions on the American River presumably would restore one of the resources for which the river was designated as a federal wild and scenic river (i.e. fisheries) without adversely affecting the other outstandingly remarkable values of the river. Therefore, the reaches designated as wild and scenic should not be affected by Restoration Plan actions, and consultation regarding the National Wild and Scenic Rivers Act may not be required.

Permits and Consultation

Proposed actions on streams in the National Wild and Scenic Rivers System are subject to consultation, review of plans and impact assessments, and approval by USFS and NPS. Figure 8 (Consultation under the National Wild and Scenic Rivers Act) outlines the consultation process.

Figure 8. Consultation under the National Wild and Scenic Rivers Act



Any person, interest group, or public agency proposing actions that may affect rivers within the National Wild and Scenic Rivers System must contact NPS or USFS at one of the following addresses:

National Park Service
One Jackson Center
1111 Jackson Center, Suite 700
Oakland, CA 94607
510/817-1300

U.S. Forest Service
Regional Office
1323 Club Drive
Vallejo, CA 94592
707/562-8737

Recommendations to Facilitate Environmental Review

Minimize actions that could affect rivers designated as wild and scenic.

Authorities

- ♦ 16 USC 1271-1287 (Wild and Scenic Rivers Act, as amended by 36 CFR Parts 297 and 8350)

Other Federal Agency Authorities

Overview:

Several agencies may have jurisdiction over lands or facilities that could be affected by Restoration Plan actions. Approval would have to be obtained from the agencies listed below when actions may encroach on land or affect facilities under their jurisdiction.

Key Project Features/Issues Triggering Need For Compliance:

- ✓ *The action occurs on or requires access across federal public lands administered by U.S. Bureau of Reclamation (USBR), U.S. Bureau of Land Management (BLM), National Park Service (NPS), U.S. Forest Service (USFS), Natural Resources Conservation Service (NRCS), or Bureau of Indian Affairs (BIA)*
 - ✓ *The action modifies, improves, or affects facilities designed, built, operated, maintained or otherwise managed by USBR, BLM, NPS, USFS, NRCS, or BIA*
 - ✓ *The action is considered subject to regulation under the Swampbuster provision of the Food Security Act, FACTA, or the Farm Bill of 1996 (NRCS only)*
-

U.S. Bureau of Reclamation

Application to Restoration Plan Actions

Restoration Plan actions in the following categories may require authority to encroach on lands or facilities administered by Reclamation (see Table 3 in Chapter 3):

- ❖ Passage
- ❖ Relocation of diversions
- ❖ Facilities management
- ❖ Water allocation and water rights adjudication

Agency Jurisdiction

All public agencies and private entities proposing implementation of specific Restoration Plan actions on or requiring access across lands and facilities administered by Reclamation must consult with and obtain authorization from Reclamation for proposed actions, including construction of easements and rights-of-way (ROWs). Because Reclamation is responsible for operating and maintaining existing facilities that may be subject to Restoration Plan actions, it may be involved as a lead or cooperating agency in implementing proposed actions and related environmental documentation in compliance with NEPA and related laws and regulations.

Authorization and Consultation

Reclamation may be responsible for:

- ❖ Ensuring compliance with NEPA;
- ❖ Evaluating the effects of actions on federal water storage, irrigation, delivery, and distribution projects;
- ❖ Constructing, operating, and maintaining works and structures for storage, diversion, and development of waters, including river flow regulation and control; and
- ❖ Protecting watershed and soil conservation, controlling erosion on public lands, and managing groundwater.

When Reclamation is involved in implementing specific actions as a lead agency or approving or permitting actions for facilities under its jurisdiction, it determines which NEPA process and documentation will be appropriate. Reclamation publishes and updates a NEPA handbook that establishes

policy and provides guidance to its personnel on NEPA and the Council on Environmental Quality's regulations for implementing a sound and constructive NEPA compliance program. Reclamation's NEPA handbook assists project managers in selecting and scoping the appropriate NEPA process, such as applying for Categorical Exclusions.

Authorities

- ♦ National Environmental Policy Act Handbook, U.S. Department of the Interior, Bureau of Reclamation, 1990
- ♦ 43 USC 869 (sale or lease of project lands for recreation, water management, other purposes)

U.S. Bureau of Land Management

Application to Restoration Plan Actions

Restoration Plan actions in the following categories may require authority to encroach on lands or facilities administered by BLM (see Table 3 in Chapter 3):

- ❖ Passage
- ❖ Relocation of diversions
- ❖ Meander belts
- ❖ Facilities management
- ❖ Water allocation and water rights adjudication

Agency Jurisdiction

BLM develops and maintains federal land use plans for public lands in accordance with the Federal Land Policy and Management Act. The act requires that the agency review and authorize applications for use permits, including the provision for adequate notice for public comment and participation in the formulation of plans for proposed actions.

Authorization and Permitting

All public agencies and private entities proposing implementation of specific Restoration Plan actions on or requiring access across lands administered by BLM must consult with and obtain authorization from BLM for proposed actions, including construction of easements and ROWs. The project proponent must submit an application for and obtain use permits or authorization permits from BLM before an action may be undertaken.

Public lands managed by BLM are sold through a competitive bid process if they are no longer required for a specific purpose or if their sale will serve public objectives. Preference for such sales may be given to interested federal agencies, state and local governments, and adjoining landowners. When land is proposed for sale or transfer, BLM requires conformance with its procedures for withdrawal of such lands from their designated public land management responsibilities, including preparation and review of appropriate environmental documentation in accordance with NEPA and related regulations.

Uses and projects requiring ROW grants or temporary use permits include access roads, utility lines, communication sites, or any other uses that involve temporary or permanent improvements on BLM lands. Any activity that involves physical disturbance to BLM land or vegetation (i.e. brush removal or

test-hole drilling) requires a permit. Other long-term occupancy or use of BLM land may also be authorized by a lease.

Where to Apply for a Permit, ROW Grant, or Lease

Applications should be submitted to the main office:

U.S. Department of the Interior
Bureau of Land Management
California State Office
2800 Cottage Way, Suite W-1834
Sacramento, CA 95825-1886
916/978-4416
Fax: 916/978-4419

or to district/resource area offices:

Bakersfield District
3801 Pegasus Drive
Bakersfield, CA 93308
661/391-6000
Fax: 661/391-6040

Folsom Resource Area
63 Natomas Street
Folsom, CA 95630
916/985-4474
Fax: 916/985-3259

California Desert District
22835 Calle San Juan De Los Lagos
Moreno Valley, CA 92553
909/697-5200
Fax: 909/697-5299

Eaglelake District
2950 Riverside Drive
Susanville, CA 96130
530/257-5381
Fax: 530/257-4831

Clear Lake Resource Area
2550 North State Street
Ukiah, CA 95482
707/468-4000
Fax: 707/468-4027

Arcata Resource Area
1695 Heindon Road
Arcata, CA 95521
707/825-2300
Fax: 707/825-2301

Redding Resource Area
355 Hemsted Drive
Redding, CA 96002
916/224-2100
Fax: 916/224-2172

Authorities

43 CFR, entire volume

- ♦ Parts 2200-2270 (exchange of federal lands for other property)
- ♦ Parts 2800-2900 (easements/permits for ROWs)
- ♦ Part 2912 (sales/leases of federal land to state/local agencies/nonprofit groups for recreation and other purposes)
- ♦ Parts 3802 and 3809 and 30 CFR
- ♦ Part 228 (use permits for surface-disturbing activities)

National Park Service

Application to Restoration Plan Actions

Restoration Plan actions in the following categories may require authority to encroach on lands or facilities administered by NPS (see Table 3 in Chapter 3):

- ❖ Relocation of diversions
- ❖ Riparian habitat
- ❖ Meander belts
- ❖ Watershed management
- ❖ Flow management
- ❖ Facilities management

Agency Jurisdiction

NPS maintains and regulates activities on certain federal public lands in accordance with a variety of laws including, but not limited to, the Federal Land Policy and Management Act, National Wild and Scenic Rivers Act, Land and Water Conservation Act of 1964, and Abandoned Shipwreck Act of 1987.

NPS also assists states in preparing and maintaining Statewide Comprehensive Outdoor Recreation Plans under the Land and Water Conservation Act to ensure that recreation development and plans at project-specific sites are consistent with public needs, as identified in such comprehensive plans.

NPS' role in maintaining the listing of federal, state, and local historic properties on the National Register of Historic Places is described under "State Historic Preservation Officer Consultation under Section 106 of the National Historic Preservation Act" below). See "National Wild and Scenic Rivers Act" above for a description of NPS' authority regarding actions affecting streams designated as Wild and Scenic Rivers.

Authorization and Consultation

All public agencies and private entities proposing implementation of specific Restoration Plan actions on or requiring access across lands administered by NPS must consult with and obtain authorization from NPS for proposed actions, including establishment of easements and ROWs.

Where to Inquire

Any person, interest group, or public agency proposing specific actions on lands managed by NPS must contact NPS at One Jackson Center, 1111 Jackson Center, Suite 700, Oakland, CA 94607 (530)817-1300.

Authorities

- ♦ 36 CFR Parts 9 and 14 (permits, leases, easements, ROWs)
- ♦ 36 CFR 297 and 43 CFR 8350
- ♦ 43 CFR, entire volume
- ♦ 43 CFR Part 7 (permits and procedures for recovery and preservation of archaeological resources)
- ♦ PL. 90-542; PL. 88-578, as amended
- ♦ PL.100-298

U.S. Forest Service

Application to Restoration Plan Actions

Restoration Plan actions in the following categories may require authority to encroach on lands or facilities administered by USFS (see Table 3 in Chapter 3):

- ❖ Relocation of diversions
- ❖ Riparian habitat
- ❖ Watershed management
- ❖ Flow management
- ❖ Facilities management

Agency Jurisdiction

USFS regulates all federal land under the National Forest system. The National Forest Management Act imposes specific requirements and limitations on activities affecting land within the National Forest system.

See "National Wild and Scenic Rivers Act" above for a description of USFS authority regarding actions affecting streams designated as Wild and Scenic Rivers.

Authorization and Consultation

All public agencies and private entities proposing implementation of specific Restoration Plan actions on or requiring access across lands administered by the USFS must consult with and obtain authorization from USFS for proposed actions, including use of easements and ROWs. Proposed actions will require approval of one or more use permits issued by USFS before an action is undertaken. Coordination with USFS is required to ensure that proposed actions and alternative plans are consistent with USFS purposes, programs, and forest management plans and practices. Project proponents must cooperate with USFS in developing the proposed action and alternative plans and follow required procedures for conducting environmental studies and implementing the NEPA process and documentation.

Where to Inquire

U.S. Forest Service
Regional Office
1323 Club Drive
Vallejo, CA 94592
707/562-8737

Authorities

- ♦ 36 CFR Part 212.10 (easements and ROWs on USFS and other lands)
- ♦ 36 CFR Part 219 (National Forest system management planning)
- ♦ 36 CFR Parts 222, 223, and 228 (use permits)
- ♦ 36 CFR Parts 251 and 261 (archaeological permits, easements, leases)
- ♦ 16 USC 471a-544p (National Forest Management Act)

Natural Resources Conservation Service

Application to Restoration Plan Actions

Restoration Plan actions in the following categories are likely to require authority to encroach on lands or facilities administered by NRCS (see Table 3 in Chapter 3):

- ❖ Riparian habitat
- ❖ Meander belts
- ❖ Watershed management
- ❖ Water quality
- ❖ Temperature management
- ❖ Flow management
- ❖ Facilities management
- ❖ Water acquisitions
- ❖ Water allocation and water rights adjudication

Agency Jurisdiction

NRCS is responsible for certifying and approving modifications or improvements to facilities designed, built, or managed by NRCS (e.g. flood control levees, reservoirs). NRCS responsibility for verifying wetland delineations is described above under "Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act."

Authorization and Consultation

Any public agency or private entity (e.g. persons, corporations) proposing implementation of Restoration Plan actions on or requiring access across lands under NRCS jurisdiction, even if such lands are privately owned, must consult with or obtain authorization from NRCS for proposed actions, including construction of easements and ROWs. (Persons or entities who need to identify and delineate wetlands on farmlands also should contact NRCS, as described above under "Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act.")

Where to Inquire

NRCS maintains several dozen local field offices throughout the state that may be contacted for local site-specific projects. Contact the main NRCS office in Davis, California for a list of local field office telephone numbers.

Natural Resources Conservation Service
Main State Office
430 G Street, #4164
Davis, CA 95616-4155
530/792-5600

Authorities

- ♦ Food Security Act of 1985 (Swampbuster provision)
- ♦ Food, Agriculture, Conservation, and Trade Act (FACTA) of 1990
- ♦ USDA publication, 1996 Farm Bill Conservation Provisions Summary, April 1996

Bureau of Indian Affairs

Application to Restoration Plan Actions

Restoration Plan actions in the following categories may require authority to encroach on lands or facilities administered by BIA (see Table 3 in Chapter 3):

- ❖ Relocation of diversions
- ❖ Riparian habitat
- ❖ Meander belts
- ❖ Watershed management

Agency Jurisdiction

BIA manages land use of Native American tribal lands in accordance with federal and state environmental laws and regulations. BIA also should be consulted for federal activities that could affect Indian Trust Assets (see "Indian Trust Assets" under "Executive Orders and Administrative Policies" below.)

Native American Tribal Land Access

Any public agencies and private entities proposing implementation of Restoration Plan actions on or requiring access across lands administered by BIA must consult with and obtain authorization from BIA and local Native American tribes for proposed actions, including easements and ROWs. BIA exercises its full authority over lands and waters on tribal lands and gives full consideration to the potential effects of proposed actions on ecological, cultural, historic, economic, and aesthetic values. BIA and local Native American tribes also regularly participate in evaluating the potential effects of proposed projects and permits on Native American religious or cultural sites and landmarks in accordance with Section 106 of the National Historic Preservation Act (NHPA), Section 4(f) of the Department of Transportation Act, and other applicable federal and state statutes to preserve important Native American resources, rights, and values (see also "State Historic Preservation Officer Consultation under Section 106 of the National Historic Preservation Act," "American Indian Religious Freedom Act," and "Indian Trust Assets" below).

Where to Inquire

Inquiries should be directed to the following address:

Bureau of Indian Affairs
Sacramento Area Office
2800 Cottage Way
Sacramento, CA 95825
916/978-6099

Authorities

- ♦ 25 CFR Parts 152 and 159-160 (sale of Native American land)
- ♦ 25 CFR Part 162 (approval of leases and permits on Native American lands)
- ♦ 25 CFR Part 169 (ROWs over Native American lands)
- ♦ 25 CFR Part 173 (concessions and leases on lands withdrawn or acquired for Native American irrigation projects)
- ♦ 43 CFR Part 7 (concurrence for issuance and supervision of antiquity permits on Native American lands)
- ♦ 42 USC 1995 (protection of access to sacred sites, use and possession of sacred objects)

Executive Orders and Administrative Policies

U.S. Council on Environmental Quality Memoranda on Farmland Preservation and Farmland Protection Policy Act

Overview:

Memoranda dated August 30, 1976, and August 11, 1980, from the U.S. Council on Environmental Quality to heads of agencies and the Farmland Protection Policy Act of 1981 (7 USC 4201, 7 CFR 658) require federal agencies preparing EISs to include farmland assessments designed to minimize adverse impacts on prime and unique farmlands.

Key Project Features/Issues Triggering Need For Compliance:

- ✓ *The action is considered a federal agency proposal and affects prime or unique farmland*
-

Application to Restoration Plan Actions

Restoration Plan actions in the following categories may require compliance with the memoranda and the Farmland Protection Policy Act (see Table 3 in Chapter 3):

- ❖ Riparian habitat
- ❖ Meander belts
- ❖ Watershed management
- ❖ Land acquisition
- ❖ Water quality
- ❖ Temperature management
- ❖ Flow management
- ❖ Facilities management
- ❖ Water acquisitions
- ❖ Water allocation and water rights adjudication

NRCS has the authority under the Farmland Protection Policy Act to identify prime or unique farmland. Before taking any action that would result in conversion of designated prime or unique farmland to nonagricultural land, a federal agency must examine the potential impacts of the proposed action and, if there are adverse effects on farmland preservation, consider alternatives to lessen the adverse effects. The federal agency must also ensure that its programs, to the extent practicable, are compatible with state, local, and private programs for the protection of farmlands and encourage other federal agencies to make the analysis of farm conversion impacts a part of their NEPA review. Compliance with the memoranda may be achieved by the federal agency through minimizing actions that could affect prime and unique farmland and by the use of mitigation for farmland impacts.

Recommendations to Facilitate Environmental Review

Cover this issue adequately in the CVPIA PEIS, particularly any adverse effects on designated prime or unique farmland, and use mitigation from the CVPIA PEIS to satisfy the memoranda and the Farmland Protection Policy Act.

Executive Order 11988 (Floodplain Management)

Overview:

Executive Order 11988 is a flood hazard policy for federal agencies. It requires that all federal agencies take action to reduce the risk of flood loss; to restore and preserve the natural and beneficial values served by floodplains; and to minimize the impact of floods on human safety, health, and welfare.

Key Project Features/Issues Triggering Need For Compliance:

- ✓ *The action is considered a federal agency proposal and is located within or may affect a floodplain*
-

Application to Restoration Plan Actions

Restoration Plan actions in all categories except fish screens, relocation of diversions, water acquisitions, water allocation and water rights adjudication, and evaluations - monitoring and research are likely to require compliance with Executive Order 11988; actions in the following categories are most likely to require compliance (see Table 3 in Chapter 3):

- ❖ Riparian habitat
- ❖ Meander belts
- ❖ Land acquisition

Implementation of Restoration Plan actions that affect floodplains will require compliance with Executive Order 11988.

Selection of projects should reflect consideration of ways to avoid the risk of flood loss and the impact of floods on human safety, health, and welfare and methods to restore and preserve the natural and beneficial values served by floodplains. If a project involves siting in a floodplain, measures should be identified to minimize flood hazard potential and floodplain mitigation requirements should be incorporated.

Before implementing a project, federal agencies are required to determine whether the action would occur in a floodplain. This determination must be made according to a floodplain map provided by the Department of Housing and Urban Development, or if available, a more detailed map of the area. If the federal agency proposes an action in a floodplain, it must consider alternatives to avoid adverse effects and incompatible development in the floodplain. If the agency finds that the only practicable alternative requires that the project be sites in a floodplain, it must:

- ❖ Design or modify its action to minimize potential harm to or within the floodplain; and

- ❖ Prepare and circulate a notice, not to exceed three pages in length, that includes the following:
 - ♦ The reasons why the action is proposed to be located in a floodplain;
 - ♦ A statement indicating whether the action conforms to applicable State or local floodplain protection standards; and
 - ♦ A list of alternatives considered.

The agency should send the notice to the State Clearinghouse. The information in this notice is often provided in a chapter on consultation and coordination in the NEPA document for the project.

Recommendations to Facilitate Environmental Review

Cover this issue adequately in the CVPIA PEIS, particularly any adverse effects on the values served by floodplains, and use mitigation from the CVPIA PEIS and other NEPA and CEQA documents to satisfy this executive order.

Executive Order 11990 (Protection of Wetlands)

Overview:

Executive Order 11990 is an overall wetlands policy for all agencies managing federal lands, sponsoring federal projects, or providing federal funds to state or local projects. It requires federal agencies to follow avoidance, mitigation, and preservation procedures with public input before proposing new construction in wetlands.

Key Project Features/Issues Triggering Need For Compliance:

- ✓ *The action is considered a federal agency proposal and is located within or may affect wetlands*
-

Application to Restoration Plan Actions

Restoration Plan actions in all categories except flow management, water acquisitions, water allocation and water rights adjudication, and evaluations - monitoring and research are likely to require compliance with Executive Order 11990; actions in the following categories are most likely to require compliance (see Table 3 in Chapter 3):

- ❖ Relocation of diversions
- ❖ Channel and instream habitat modification
- ❖ Meander belts

Executive Order 11990 requires federal agencies to follow avoidance, mitigation, and preservation procedures with public input before proposing new construction in wetlands. When federal lands are proposed for lease or sale to nonfederal parties, Executive Order 11990 requires that restrictions be placed in the lease or conveyance to protect and enhance the wetlands on the property. Executive Order 11990 has the effect of restricting the sale of federal lands containing wetlands; however, it does not apply to federal discretionary authority for nonfederal projects (other than funding) on nonfederal land. Compliance may be achieved in coordination with Section 404 compliance.

To achieve compliance with this executive order, the federal agency should design the project description to avoid wetlands, minimize activities in wetlands, and coordinate with the Corps and the Section 404 process to determine wetland mitigation needs.

Recommendations to Facilitate Environmental Review

Cover this issue adequately in the CVPIA PEIS, particularly any effects on wetlands, and use mitigation from the CVPIA PEIS, other NEPA and CEQA documents, and the Section 404 process to satisfy this executive order.

Executive Order 12898 (Environmental Justice in Minority and Low-Income Populations)

Overview:

Executive Order 12898 requires federal agencies to identify and address disproportionately high and adverse human health and environmental effects of federal programs, policies, and activities on minority and low-income populations.

Key Project Features/Issues Triggering Need For Compliance:

- ✓ *The action is considered a federal agency proposal and may affect minority or low-income populations*
-

Application to Restoration Plan Actions

It is assumed that there will be federal involvement in most, if not all, of the Restoration Plan actions. Actions in all categories except facilities management and evaluations - monitoring and research may require compliance with Executive Order 12898 (see Table 3 in Chapter 3).

Federal agencies are directed to ensure that federal programs or activities do not result, either directly or indirectly, in discrimination on the basis of race, color, or national origin. Federal agencies are required to provide opportunities for input in the NEPA process by affected communities and to evaluate significant and adverse environmental effects of proposed federal actions on minority and low-income communities during preparation of federal environmental documents. Sometimes an outreach program to minority and low-income populations at early stages of project planning can be employed. The NEPA scoping process can also be used to solicit information on the concerns of minority and low-income populations. If a proposed federal action will not result in significant adverse impacts on minority and low-income populations, the environmental document must describe how Executive Order 12898 was addressed during the NEPA process. EPA has taken a leadership role to oversee the process of coordinating and guiding federal agencies in the development of strategies for achieving environmental justice.

Implementation of Restoration Plan actions may involve projects that have environmental effects, including human health, social, and economic effects, on minority and low-income residential populations (such as in farming communities).

Recommendations to Facilitate Environmental Review

Cover this issue adequately in the CVPIA PEIS, particularly any adverse effects on the agricultural community, and use mitigation from the CVPIA PEIS and other NEPA or CEQA documents to satisfy this executive order.

American Indian Religious Freedom Act of 1978

Overview:

The American Indian Religious Freedom Act of 1978 (42 USC 1996) sets forth the policy of the U.S. Department of the Interior to protect and preserve the observance of traditional Native American religions.

Key Project Features/Issues Triggering Need For Compliance:

- ✓ *The action is considered a federal agency proposal and may affect Native American religious practices*
-

Application to Restoration Plan Actions

Restoration Plan actions in all categories except fish screens, riparian habitat, water quality, water allocation and water rights adjudication, and evaluations - monitoring and research are likely to require compliance with the American Indian Religious Freedom Act of 1978 (see Table 3 in Chapter 3).

The American Indian Religious Freedom Act requires federal agencies to evaluate their policies and procedures to ensure compliance with the policy of the U.S. Department of the Interior to protect and preserve the observance of traditional Native American religions. Implementation of projects (either undertaken directly or indirectly approved by federal agencies) that could involve impacts on the observance of traditional Native American religions will require compliance with this act. Sometimes creation of an outreach program to Native American groups at early stages of project planning and using the NEPA scoping process to solicit information on the concerns of Native American groups is helpful to achieve compliance with this act.

Recommendations to Facilitate Environmental Review

Cover this issue adequately in the CVPIA PEIS, particularly effects on Native American tribe religious observance, and use mitigation from the CVPIA PEIS and other NEPA or CEQA documents to comply with this act.

Indian Trust Assets

Overview:

All federal agencies have a responsibility to protect Indian Trust Assets (ITAs). ITAs are legal interests in assets held in trust by the federal government for Native American tribes or individuals. Assets may be owned property, physical assets, intangible property rights, a lease, or the right to use something.

Key Project Features/Issues Triggering Need For Compliance:

✓ *The action may affect ITAs*

Application to Restoration Plan Actions

Restoration Plan actions in all categories except fish screens and evaluations - monitoring and research are likely require consideration of effects on ITAs (see Table 3 in Chapter 3):

As discussed under "Bureau of Indian Affairs" above, the Bureau of Indian Affairs (BIA) manages land use of Native American tribal lands in accordance with federal and state environmental laws and regulations. BIA also should be consulted for federal activities that could affect ITAs.

ITAs may be located both on and off Indian reservations and typically include lands, minerals, water rights, hunting and fishing rights, natural resources, money, and claims. ITAs do not include properties in which a tribe or individual has no legal interest, such as certain off-reservation sacred lands. ITAs cannot be sold, leased, or alienated or otherwise have their value reduced without approval from the United States through the BIA.

Although ITAs are sometimes addressed in the NEPA compliance process, which is triggered by federal actions, it is also necessary to deal with ITAs that could be affected by operational activities or by completed projects that do not trigger NEPA compliance. The United States has a responsibility to protect trust assets and rights and to take reasonable actions to protect ITAs. ITAs that could be adversely affected should be identified by the federal agency. It is important to consider potential effects on ITAs related to hunting, fishing, and water rights, even if the proposed action is not on a reservation.

To identify ITAs, the following entities should be consulted: potentially affected Native American tribes or individuals, the BIA, the Solicitor's Office of the Department of the Interior, the Native American Affairs Office, and the Native American Heritage Commission. In most cases, the tribal government should be the primary point of contact, but the BIA should always be contacted. Additionally, a public involvement program, including consultation with interested affected individuals, organizations, agencies, and tribal governments, may be beneficial.

The Secretary of the Interior, acting through the BIA, must approve any sale, lease, impacts by right-of-way (ROW) acquisition, or other effects on ITAs. Disagreements concerning impacts on ITAs are

resolved using the same channels of appeal open to other groups and individuals that disagree with conclusions reached by an agency during implementation of the NEPA process.

When adverse impacts on an ITA cannot be avoided, mitigation or compensation measures should be identified so that no net loss is incurred by the Native American beneficial owners of the asset. Agreements with Native American beneficial owners concerning mitigation or compensation for adverse impacts on ITAs may require BIA or congressional approval.

Where to Inquire

Inquiries should be directed to the following address:

Bureau of Indian Affairs
Sacramento Area Office
2800 Cottage Way
Sacramento, CA 95825
916/978-6099

Recommendations to Facilitate Environmental Review

Cover this issue in the CVPIA PEIS, particularly effects on water rights and fisheries considered ITAs, and use mitigation from the CVPIA PEIS and other NEPA or CEQA documents to comply with this responsibility.

Authorities

- ♦ 25 CFR Parts 152 and 159-160 (sale of Native American land)
- ♦ 25 CFR Part 162 (approval of leases and permits on Native American lands)
- ♦ 25 CFR Part 169 (ROWs over Native American lands)
- ♦ 25 CFR Part 173 (concessions and leases on lands withdrawn or acquired for Native American irrigation projects)
- ♦ 43 CFR Part 7 (concurrence for issuance and supervision of antiquity permits on Native American lands)
- ♦ 42 USC 1995 (protection of access to sacred sites, use and possession of sacred objects)

State Laws and Implementing Regulations

Section 401 Certification

Overview:

Section 401 of the federal Clean Water Act requires that state water quality standards not be violated by the discharge of fill or dredged material into waters of the United States. The U.S. Army Corps of Engineers (Corps) will not issue a Section 404 permit until the state, through the California State Water Resources Control Board (SWRCB) and Regional Water Quality Control Board (RWQCB), has issued a certification (or a waiver of certification) of compliance with state water quality standards.

Key Project Features/Issues Triggering Need For Compliance:

- ✓ *The action involves a federal license or permit that may affect state water quality, and the action would result in a discharge of a pollutant into waters of the United States*

Timing:

A waiver of certification can take 30-60 days. Certification, depending on complexity of the issues involved, can typically take 3-6 months.

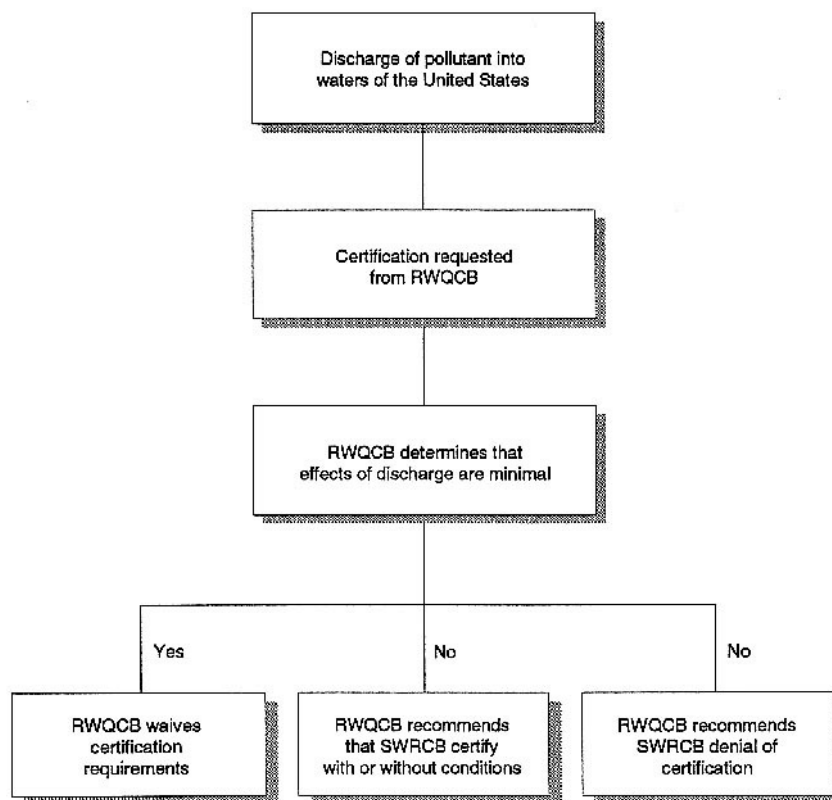
Application to Restoration Plan Actions

Restoration Plan actions in most action categories are likely to require compliance with Section 401 of the Clean Water Act; actions in the following categories are most likely to require compliance (see Table 3 in Chapter 3):

- ❖ Fish screens
- ❖ Passage
- ❖ Relocation of diversions
- ❖ Channel and instream habitat modification
- ❖ Spawning gravel
- ❖ Meander belts

Under Section 401 of the federal Clean Water Act, applicants for a federal license or permit to conduct activities that may result in a discharge of a pollutant into waters of the United States must obtain a certification from the state in which the discharge would originate or, if appropriate, from the interstate water pollution control agency having jurisdiction over the affected waters at the point where the discharge would originate. Therefore, all actions with federal agency involvement that could affect state water quality, including actions requiring federal agency approvals, must comply with Section 401 of the Clean Water Act and applicants must obtain certification or waiver of certification that the discharge does not violate state water quality requirements. The certification must verify that the discharge will comply with the applicable effluent limitations and water quality standards. A certification obtained for construction of a facility must also pertain to operation of the facility. SWRCB, through the RWQCBs, is responsible for issuing water quality certifications pursuant to Section 401 of the Clean Water Act. Figure 9 shows the process for obtaining Section 401 certification.

Figure 9. Certification under Section 401 of the Clean Water Act



Permits and Consultation

How to Apply for a Permit

The applicant typically sends the relevant information, including project description, detail on the discharge activity, NEPA and CEQA documentation, relevant federal permit application (e.g. Section 404 permit application), and California Department of Fish and Game (DFG) Streambed or Lake Alteration Agreement to the relevant RWQCB. The RWQCB will review the application and may waive

certification requirements if it determines that the effects of the discharge on state water quality standards would be minimal. If the RWQCB does not waive certification, it will recommend that the SWRCB either certify that the discharge complies with state water quality standards, with or without imposed conditions, or that the SWRCB deny certification. The Corps will not issue a Section 404 permit until certification (or a waiver of certification) is issued.

Appendix B includes an example of a request for water quality certification and an RWQCB notice of certification.

Where to Apply for a Permit

Figure 10 shows the locations of the nine RWQCBs and their mailing addresses and telephone numbers.

Permit Application Fee

For certification or waiver of certification of state water quality standards, a minimum fee of \$500 is required. Depending on the amount of fill or dredging, this fee could reach \$10,000.

Recommendations to Facilitate Environmental Review

- ❖ Resolve water quality issues prior to application to the RWQCB to be eligible for waiver of certification.
- ❖ Submit CEQA documentation, if available, to the RWQCB with the Section 401 certification request.
- ❖ When the proposed activity requires other licenses, permits, and agreements, early coordination with the appropriate agencies is helpful.
- ❖ As with many other permitting processes, preparing a complete application, including a detailed and relatively final project description and proof of CEQA compliance, can greatly help expedite processing of a Section 401 permit. When the need for a Section 404 permit triggers the need for a Section 401 permit, the Section 404 permit application package can be used in the Section 401 application as well.

Figure 10. State Water Quality Control Board Regional Offices



National Pollutant Discharge Elimination System

Overview:

The California State Water Resources Control Board (SWRCB)/Regional Water Quality Control Boards (RWQCBs) regulate both point-source discharges (e.g. wastewater treatment plant discharges) and non-point source discharges (e.g. urban runoff) through the National Pollutant Discharge Elimination System (NPDES) permit program. The SWRCB and RWQCBs are responsible for issuing NPDES permits for: 1) industrial stormwater runoff, 2) stormwater runoff from general construction activities, 3) municipal stormwater runoff, and 4) point-source discharges.

Key Project Features/Issues Triggering Need For Compliance:

- ✓ *The action would result in a new or continued point-source discharge of pollutants into surface waters of the United States*
-

Application to Restoration Plan Actions

Restoration Plan actions in most categories are likely to require compliance with the National Pollutant Discharge Elimination System permit process; actions in the following categories are most likely to require compliance (see Table 3 in Chapter 3):

- ❖ Spawning gravel
- ❖ Meander belts

The federal Clean Water Act authorizes states to issue NPDES permits for discharges to surface waters, excluding those regulated by the Corps under Section 404 of the Clean Water Act. The SWRCB and the RWQCBs issue general and individual NPDES permits. If a facility or activity will discharge waste (including stormwater runoff for certain industrial or construction activities) to surface water, the owner or operator must obtain an NPDES permit.

NPDES permits may be required for general construction activities and point-source discharges. NPDES permits are also required for industrial or municipal stormwater runoff; however, because Restoration Plan actions are unlikely to involve these types of activities, they are not discussed in this handbook. Requirements for permitting of point-source discharges and construction activity are presented below.

The NPDES general permit authorizes the discharge of stormwater from construction sites. It prohibits the discharge of materials other than stormwater and all discharges that contain a hazardous substance in excess of reportable quantities established in by the U.S. Environmental Protection Agency (EPA) and requires preparation of a Storm Water Pollution Prevention Plan and monitoring program. The permit is

required for all construction projects involving more than 5 acres or part of a larger common plan of development or sale. Project proponents are required to submit a notice of intent and fee to the Storm Water Permit Unit of SWRCB.

Stormwater discharges in the Lake Tahoe Unit are regulated by a separate permit adopted by the Central Valley RWQCB, Lahontan Region, and are not covered by this permit. Additionally, stormwater discharges on Native American lands are regulated by EPA.

NPDES permits are not required for project activities that propose to discharge waste into a community sewer system. EPA and RWQCBs require certain industries to treat hazardous wastes before they enter a community sewer system. Applicants should contact the local sewerage agency to determine whether pretreatment of waste discharges is required for certain waste streams.

Permits and Consultation

How to Apply for a Permit

The type of application form and information required depends on the specific type of discharge activity proposed. Typically, the applicant is required to submit information on the activity proposed; the type, quantity, quality, interval, and method of discharge; the surface-water receptor; and discharge points.

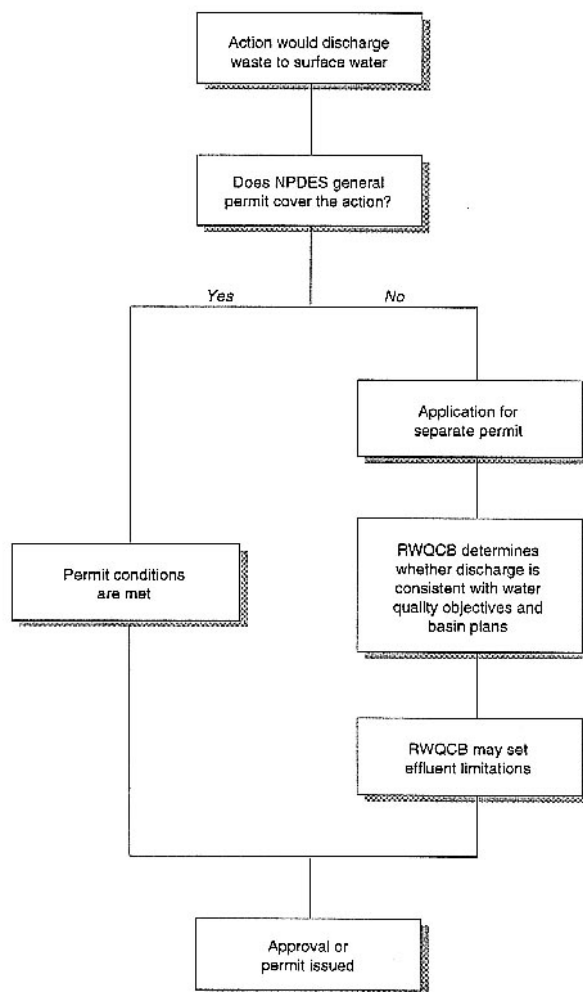
The RWQCB evaluates the NPDES permit application to determine whether the proposed discharge is consistent with its adopted water quality objectives, the basin plan for the area in which the project is located, and federal limitations. The RWQCB sets effluent limitations on each discharge to ensure that the discharge will not harm public water supplies, agricultural and industrial water use, wildlife habitat, or any water-related recreational activity and that the discharge will comply with the requirements of federal and state law. The RWQCB may deny the permit if the discharge contains a harmful biological, radiological, or chemical agent or if the discharge would substantially impair the anchorage and navigability of the waterway.

A RWQCB's action of issuing an NPDES permit requires compliance with CEQA. RWQCBs rarely serve as lead agencies for CEQA compliance and, in some cases, their activities are exempt from CEQA. If the action is not exempt, RWQCBs typically serve as a lead agency by responding to notices of preparation of an EIR and commenting on proposed Negative Declarations and draft EIRs for new plants or expansions of wastewater treatment facilities and other operations that require an NPDES permit for point-source discharges.

A construction site will be considered to be covered by the NPDES general permit once a complete and accurate notice of intent has been filed and the appropriate annual fee paid. On receipt of the notice of intent and fee, the RWQCB will send each discharger a letter containing the discharger's identification number. RWQCB staff can, at their discretion, conduct field visits of sites that are covered under the permit to ensure compliance with permit conditions. As with issuance of other NPDES permits, SWRCB is not typically the lead agency for issuance of NPDES permits for stormwater discharges associated with construction activities; SWRCB will take part in the CEQA process for the land use entitlement application to the city or county.

Figure 11 illustrates the NPDES permit process. Appendix B includes sample NPDES permitting information.

Figure 11. National Pollutant Discharge Elimination System Permit Process



Where to Apply for a Permit

Applicants should direct inquiries to the RWQCB for the area in which the proposed project is located (Figure 10. State Water Quality Control Board Regional Offices). The SWRCB normally does not issue NPDES permits, but manages appeals of RWQCB decisions. An RWQCB decision can be appealed to:

California State Water Resources Control Board
1001 I Street
P.O. Box 100
Sacramento, CA 95812-0100

Applicants for an NPDES general permit should request an application form from the Storm Water Permit Unit of SWRCB at the following address:

California State Water Resources Control Board
Division of Water Quality
Attn: Storm Water Permit Unit
P.O. Box 100
Sacramento, CA 95812

Permit Application Fee

Each applicant for an NPDES permit is required to submit a fee to the RWQCB with the permit application. A fee schedule has been developed by SWRCB and is generally proportional to the volume of discharge.

The NPDES general permit requires a \$250 fee for each construction site that discharges into a municipal, separate storm-sewer system regulated by an area wide urban stormwater permit and \$500 for all other construction sites.

Recommendations to Facilitate Environmental Review

- ❖ Coordinate with SWRCB and the RWQCB for individual permits during the planning and design phase of the Restoration Plan action to identify compliance needs, commitments, and mitigation options and to resolve issues prior to permit processing.
- ❖ Apply for an NPDES permit for stormwater runoff from construction sites of more than 5 acres in the project development phase.

Waste Discharge Requirements

Overview:

SWRCB establishes statewide policy on numerous issues related to surface water. It does not have authority or jurisdiction over groundwater resources from a supply perspective. The RWQCBs regulate most activities that could contaminate groundwater quality. Waste discharge requirement permits are issued by the RWQCBs to regulate activities that may affect groundwater quality or that may discharge waste in a diffused manner.

Key Project Features/Issues Triggering Need For Compliance:

- ✓ *The action would result in any discharge or change in discharge (non-point or point source), other than to a community sewer system, which could affect the quality of either surface or groundwater*

Timing:

Applicants must submit a complete Report of Waste Discharge at least 120 days before they intend to begin operation.

Application to Restoration Plan Actions

Restoration Plan actions in most categories are likely to require compliance with the Waste Discharge Requirement Permit process; actions in the following categories are most likely to require compliance (see Table 3 in Chapter 3):

- ❖ Passage
- ❖ Spawning gravel
- ❖ Channel and instream habitat modification
- ❖ Meander belts

The nine RWQCBs enforce water quality standards established in SWRCB-approved basin plans and establish water quality objectives and beneficial uses of major rivers and streams in their jurisdiction. RWQCBs also enforce statewide policies established by SWRCB. They primarily regulate waste discharges to surface waters from wastewater treatment plants, industrial facilities, and other point and non-point sources such as urban runoff from municipal areas.

Permits and Consultation

The owner or operator of any facility or activity that proposes to discharge waste that may affect groundwater quality or that may discharge waste in a diffused manner (e.g. through erosion from solid disturbance) must first obtain a Waste Discharge Requirement (WDR) Permit from the appropriate RWQCB. RWQCBs adopt WDRs to protect waters of the state for the use and enjoyment of the people of California. Activities that do not pose a threat or nuisance to water quality may be allowed a waiver of WDR permits.

Examples of the types of Restoration Plan actions that may require WDR permits include discharge of waste from construction or dredging operations and residual waste and effluent from cleanup of sites.

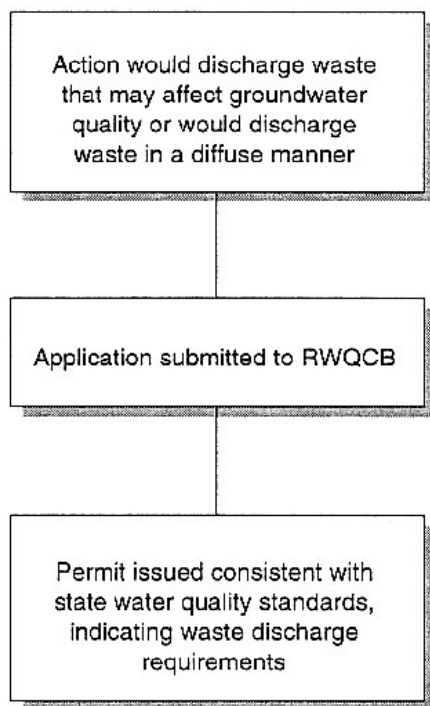
How to Apply for a Permit

The process for obtaining a WDR permit is outlined in Figure 12. Applicants must submit a complete Report of Waste Discharge at least 120 days before they intend to begin operation. The information provided must include:

- ❖ A description of the facility or activity, including whether the applicant proposes to increase or change an existing discharge or create a new one;
- ❖ A description of the discharge by type, quality, quantity, interval, and method of discharge;
- ❖ The source of water that contributes to or transports the wastes; and
- ❖ Water flow and location map identifying all discharge points.

Appendix B includes a sample WDR permit.

Figure 12. Waste Discharge Requirement Permit Process



Where to Apply for a Permit

All applicants for WDR permits should direct their applications and any inquiries to the RWQCB for the area in which the proposed action is located (Figure 10. State Water Quality Control Board Regional Offices).

Permit Application Fee

Each applicant for a WDR permit is required to submit a fee to RWQCB with the Report of Waste Discharge. After WDR permits are issued, a discharger must pay an annual fee to SWRCB. The RWQCB will specify the amount of the fee to be submitted.

Recommendations to Facilitate Environmental Review

Incorporate measures into the project design and construction plans and specifications to ensure that pollutants of concern will not be present in any proposed discharges to surface water or groundwater.

Water Rights

Overview:

A water right is a legally protected right, granted by law, to take possession of water occurring in a water supply and put it to beneficial use. The two most common types of water rights in California are riparian and appropriative water rights.

Riparian water rights are entitlements to water that are held by owners of land bordering natural flows of water. A landowner has the right to divert a portion of the natural flow for reasonable and beneficial use on his or her land within the same watershed. If natural flows are not sufficient to meet reasonable beneficial requirements of all riparian users on a stream, the users must share the available supply according to each owner's reasonable requirements and uses. Natural flows do not include return flows from use of groundwater (e.g. for irrigation), water seasonally stored and later released (e.g. by the State Water Project [SWP] or the Central Valley Project [CVP] for Delta export), or water diverted from another watershed.

Appropriative rights are held in the form of conditional permits or licenses from the California State Water Resources Control Board (SWRCB). These authorizations contain terms and conditions to protect prior water rights holders and the public interest in fish and wildlife resources. Diversion and storage of water in upstream reservoirs by SWP and CVP, and diversion and export of water from the Delta are authorized and regulated by SWRCB under appropriative water rights.

Key Project Features/Issues Triggering Need For Compliance:

- ✓ *The action requires the diversion of water not authorized under an existing water right*
 - ✓ *The action includes purchase or transfer of water*
 - ✓ *The action includes a change in use or change in point of diversion of water under an existing water right*
 - ✓ *The action includes storing more than 10 acre-feet of water for more than 30 days*
 - ✓ *The action requires appropriation of water for use on non-riparian land*
-

Application to Restoration Plan Actions

Restoration Plan actions in the categories of water quality, temperature management, flow management, water acquisitions, and water allocation and water rights adjudication are likely to require compliance with the SWRCB Division of Water Rights Permit to Appropriate Water; actions in the following categories are most likely to require compliance (see Table 3 in Chapter 3):

- ❖ Water acquisitions
- ❖ Water allocation and water rights adjudication

The California Water Code makes SWRCB responsible for the permitting of water diversions and use throughout the state. The Division of Water Rights assists SWRCB with this function. SWRCB issues permits to appropriate water and issues change petitions to existing rights with terms to protect prior rights, public trust resources, and the public interest.

Permits and Consultation

Any person or public agency proposing to divert water for use on non-riparian land or to store unappropriated surface water of more than 10 acre-feet for more than 30 days must first obtain a permit from SWRCB to appropriate water. The permit is required to establish the applicant's right to the water and the priority in relation to other water users. SWRCB attaches conditions to these permits to ensure that the water user prevents waste, practices water conservation, does not infringe on the rights of others, and puts the state's water resources to the fullest beneficial use in the best interest of the public. The water appropriation permitting process can be complicated and time consuming. For water right applications with unresolved protests, considered "controversial," a water rights hearing will be required. The typical process for acquiring a permit to appropriate water is shown in Figure 13.

Persons or organizations diverting water under a riparian claim or a claim of appropriative right initiated before December 14, 1914, must file a Statement of Water Diversion and Use with SWRCB. One purpose of filing the statement is to make a public record of all surface diversions not already on file with or known to SWRCB.

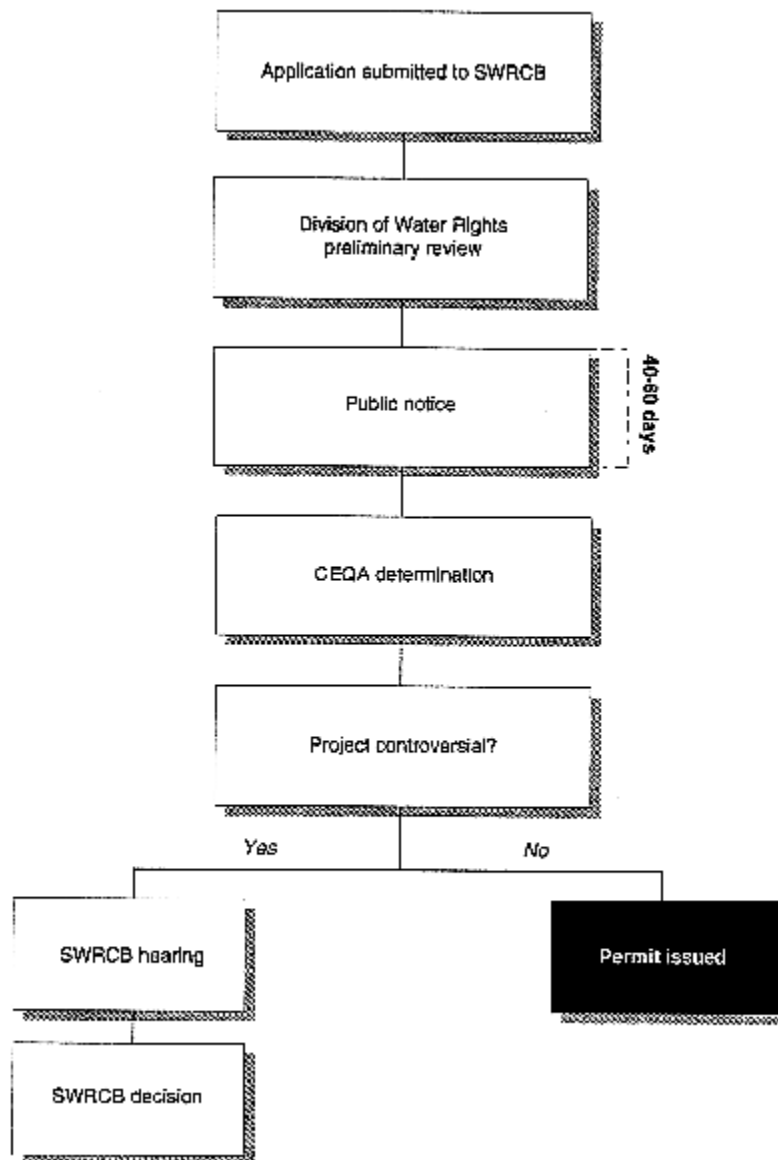
Some Restoration Plan actions could include purchase of water rights, transfers of water rights from existing water rights holders, or changes in use or point of diversion. These actions would require modification of existing water rights and would trigger the SWRCB Division of Water Rights permit process.

Where to Apply for a Permit

Completed applications should be sent to:

California State Water Resources Control Board
Division of Water Rights
P.O. Box 2000
Sacramento, CA 95812

Figure 13. State Water Resources Control Board Division of Water Rights Permit to Appropriate Water



Water users applying for statements of water diversion and use should submit SWRCB Form WR 1, "Application to Appropriate Water by Permit or Registration of Small Domestic Use Appropriation," to the address above.

How to Apply for a Permit

Applicants should complete two copies of SWRCB Form WR 1, "Application to Appropriate Water by Permit or Registration of Small Domestic Use Appropriation," and submit them to SWRCB. Applicants should contact SWRCB for assistance with the form, which requires the following information:

- ❖ Applicant's name and address;
- ❖ Source at the point of diversion, location of the point(s) of diversion and redirection;
- ❖ Purpose, amount, and season of use;
- ❖ Justification of amount;
- ❖ Place of use;
- ❖ Diversion works, completion schedule; and
- ❖ Existing water right(s).

Landowners may submit separate applications for each proposed diversion. SWRCB serves as lead agency for CEQA for diversion projects to appropriate water from California's rivers and streams.

Permit Application Fee

A \$100 minimum filing fee for applications to appropriate water for use on non-riparian land must be submitted with the application to be applied to any additional fees required by SWRCB. Fees are based on the amount of water diverted in cubic feet per second and stored in acre-feet.

An \$850 DFG Water Right filing fee must be paid to SWRCB before a water right application can be noticed. The check must be made out to DFG.

Recommendations to Facilitate Environmental Review

- ❖ Engage legal counsel familiar with water right law to investigate the status of water rights on any affected waterway, including the number, size, location, type of use, and season of use of the existing water rights.
- ❖ Determine whether the stream is adjudicated or fully appropriated and whether there is any current or historical water right litigation that could constrain future permit applicants.
- ❖ Enter into early discussions with major downstream water right holders and attempt to negotiate project design and operational features that will accommodate their interests to the extent feasible.

Authorities

The publications listed below are available at SWRCB offices at 901 P Street, Sacramento, California:

- ♦ California Water Code, Divisions 1 and 2
- ♦ California Administrative Code, Title 23, Chapter 3
- ♦ Appropriation of Water in California, SWRCB, July 1977
- ♦ How to File an Application to Appropriate Unappropriated Water in California
- ♦ Information Pertaining to Water Rights in California

Section 2081 of the California Fish and Game Code (California Endangered Species Act)

Overview:

The current framework for California endangered species protection was established by the California Endangered Species Act (CESA). CESA prohibits the "take" of plant and animal species designated by the California Fish and Game Commission as either endangered or threatened. Take includes hunting, pursuing, catching, capturing, killing, or attempting such activity. No special distinction is made in CESA between state-owned and private property.

There are some important distinctions between CESA and the Federal Endangered Species Act (FESA). Like FESA, CESA prohibits the take of any listed species. As under Section 10 of FESA, CESA Section 2081 requires that an incidental take permit be obtained for any project that would result in the take of a listed species. The requirement for obtaining an incidental take permit under CESA are similar, but not identical, to the requirements for obtaining an incidental take permit under FESA. For example, CESA does not specifically require preparation of an HCP. However, like FESA, CESA generally requires an applicant to analyze and explain the project's impacts on listed species, identify measure to mitigate the impacts of taking the listed species, identify funding for implementation, and include a monitoring plan. Similar to USFWS and NOAA Fisheries procedures under FESA, DFG cannot issue an incidental take permit for an action if that action would jeopardize the continued existence of a listed species.

Ordinarily, federal agencies are not subject to CESA and are not required to obtain CESA incidental take permits for federal agency actions; CESA generally applies only to entities and individuals.

Key Project Features/Issues Triggering Need For Compliance:

- ✓ *A species listed as a candidate, threatened, or endangered under CESA may be present in the project area*
- ✓ *The action may result in the "take" of a species listed under CESA (Section 2081)*

Timing:

Most projects receive a Section 2081 Incidental Take Statement within 2-3 months of DFG's receipt of required information.

Application to Restoration Plan Actions

It is assumed that there will be federal involvement in all the Restoration Plan actions. It is unknown whether any action would also involve a state lead agency. Section 2081 may apply to any actions in the following categories that involve take of state-listed species:

- ❖ Fish screens
- ❖ Passage
- ❖ Relocation of diversions
- ❖ Channel and instream habitat modification
- ❖ Spawning gravel
- ❖ Riparian habitat
- ❖ Meander belts

CESA requirements of DFG parallel and to a large extent overlap DFG's responsibilities within the CEQA process. As a trustee agency for the state's natural resources, DFG reviews all CEQA documents for actions that could affect the state's resources. CESA provides DFG with administrative responsibilities over the plant and wildlife species listed under the state act as threatened or endangered.

As described under the discussion for Section 2081 below, CESA prohibits the taking of a species listed under the state act. CESA provides DFG with the authority to permit the take of state-listed species under certain circumstances.

The area of DFG's jurisdiction includes areas throughout California, including waters flowing across federal land.

Tiered Project-Level Compliance: Action Specific Implementation Plans (ASIP)

An ASIP is an environmental review documented created for the CALFED Multi-Species Conservation Strategy (MSCS) that incorporates the informational requirements of FESA, California ESA, and NCCPA in one format. An ASIP tiers from the CALFED program-level compliance documents and explains how a CALFED action implements and adheres to the programmatic conservation strategy described in the MSCS. Under FESA, project proponents may use ASIPs to obtain Section 10 incidental take permits for CALFED actions in certain circumstances. Under the California ESA and the NCCPA, ASIPs serve as section 2081 authorization and project-level NCCPs, respectively. USFWS, NOAA Fisheries, and DFG assist and advise lead agencies/project proponents for CALFED actions during the preparation of ASIPs and coordinate their comments regarding each completed ASIP. These agencies also ensure that the requirements for compliance with FESA, California ESA, and NCCPA are consistent and are not duplicative.

CALFED projects are required to prepare an ASIP and therefore, if a Restoration Action qualifies as a CALFED project, i.e. receives funding from CALFED, an ASIP must be prepared. (See CALFED Bay-Delta Program, *Guide to Regulatory Compliance for Implementing CALFED Actions*, Vol. 1 and 2).

Section 2081 Take Authorization

Take Prohibition. CESA prohibits the take of plant and animal species designated by the California Fish and Game Commission as endangered or threatened. Take is defined by CESA to include hunting, pursuing, catching, capturing, killing, or attempting such activity. Take includes any act that is the proximate cause of death of an individual of a listed species or any act of which the natural and probable consequence is the death of any individual of a listed species. However, the State Attorney General has determined that the CESA definition of take does not include indirect mortality resulting from habitat modification. The CESA take prohibition for plants is limited by the exceptions in the California Native Plant Protection Act. No special distinction is made in CESA between state-owned property and private property. DFG may restrict the take of candidate species if notice is given to all interested parties by correspondence, newspaper notice, or press release.

Section 2081(a) Incidental Take Permits.

Section 2081(a) of the California Fish and Game Code authorizes DFG to issue permits or memorandums of understanding authorizing individuals, public agencies, universities, zoological gardens, and scientific or educational institutions to import, export, take, or possess any endangered, threatened or candidate species for scientific, educational, or management purposes. These activities typically have the intent to actually take the species, but this intentional taking is to either promote learning or to assist in the recovery of the listed species.

Section 2081(b) Incidental Take Permits.

CESA provides that the DFG may authorize acts that are otherwise prohibited under Section 2080 if the take is incidental to an otherwise lawful activity. Prior to 1998, CESA did not have an explicit provision allowing the DFG to issue permits for incidental take. The old Section 2081 allowed DFG to issue permits of memorandum of understandings authorizing the take of listed and candidate species as currently provided under Section 2081(a). A number of legal cases challenged DFG's use of 2081 management permits that allowed the take of listed species incidental to private development as long as there was mitigation to manage the species. In the end the court held that DFG had exceeded its statutory authority in issuing the Section 2081 management permits. In response to these rulings, the Legislature amended CESA to include Section 2081(b). Section 2081(b) expressly authorized the issuance of incidental take permits.

An incidental take permit may be issued if:

1. The authorized take is incidental to an otherwise lawful activity;
2. The impact of the authorized take are minimized and fully mitigated;
3. The measures required to minimize and fully mitigate the impacts of the authorized take:

- a. are roughly proportional in extent to the impact of the taking on the species;
 - b. maintain the applicant's objectives to the greatest extent possible; and
 - c. are capable of successful implementation;
4. Adequate funding is provided to implement the required minimization and mitigation measures and to monitor compliance with and the effectiveness of the measures; and
 5. Issuance of the permit will not jeopardize the continued existence of a State-listed species.

Because the typical CEQA process is incorporated into the Section 2081 take permit process, DFG's incidental take regulatory program has been certified under CEQA as the "functional equivalent" of CEQA, which exempts DFG from preparing a separate environmental impact report and certain other CEQA requirements when issuing a permit under Section 2081(b). However, when DFG issues a permit under Section 2081 for a project where another agency will be the lead agency for CEQA compliance, DFG is considered a responsible agency under CEQA. In this instance, DFG will not issue a Section 2081 take permit unless the lead agency prepares a CEQA compliance document for the project.

Section 2080.1 Take Authorization through Federal ESA (Jointly Listed Species)

A person who has obtained a federal incidental take statement through issuance of a Biological Opinion (Section 7 of the ESA) or an incidental take permit through approval of an HCP (Section 10 of the ESA) for species also listed under CESA, can utilize the FESA permit for CESA compliance. This option is only available for jointly listed species. The person wishing to take advantage of Section 2080.1 must:

1. Notify DFG in writing that they have received FESA incidental take authorization; and
2. Include a copy of the incidental take authorization along with the notice.

Upon receipt of the above mentioned notice, DFG must publish receipt of the notice in the General Public Interest section of the California Regulatory Notice Register. Within 30 days of receiving the notice, the Director must determine whether the incidental take authorization is consistent with CESA. This requirement makes it imperative that project proponents involve representatives of DFG when proceeding with federal ESA compliance to ensure that DFG concerns are adequately addressed in the federal ESA take authorization if the proponent wishes to utilize Section 2080.1.

NCCP Act

Section 2835 of the California Fish and Game Code provides an alternative to obtaining incidental take authorization through a Section 2081. Under Section 2835, the development of a multiple-species habitat plan, according to the NCCP Act, may include independent incidental take authority.

The new Natural Community Conservation Planning Act was signed by the governor in February 2002. This new version of the Act went into effect on January 1, 2003. This new Act repeals and replaced the previous NCCPA.

The NCCPA authorizes and encourages conservation planning on a regional scale in California. The NCCPA addresses the conservation of natural communities, as well as individual species. The mechanism for this regional conservation is the development of natural community conservation plans (NCCPs) that provide for early coordination efforts to protect natural communities, including listed species or species that are not yet listed but are likely to be listed in the future. Preparation of NCCPs are voluntary, but are encouraged by DFG for large-scale, regional planning efforts.

How to Apply for a Permit

DFG has determined that issuance of the Section 2081 Take Authorization does not require DFG CEQA compliance (although the underlying action typically does trigger CEQA compliance).

The following information was needed during request for Section 2081 Take Authorization:

- ❖ A complete description of the project area and project impact area, including maps;
- ❖ Known and potential distribution of endangered and threatened species in the project area and project impact area, based on a recent biological assessment (this should include detailed information on species distribution, habitat, and life history requirements);
- ❖ An analysis of the potential adverse impacts, including cumulative effects, of the project on all listed species affected by project activities; and
- ❖ A complete description of the agreed on mitigation or avoidance measures that will be used to offset adverse impacts.

Initial negotiations, DFG coordination, and review of draft documents take place at the DFG regional office in consultation with the Environmental Services Division in Sacramento. Once the regional staff is in agreement with the applicant, the final draft documents are sent to Sacramento for final review by headquarters staff and approval by the DFG director. Headquarters staff reviews documents for consistency with DFG, California Fish and Game Commission, and legislative policy. Most projects receive a Section 2081 Take Authorization within 3-6 months of receipt of required information.

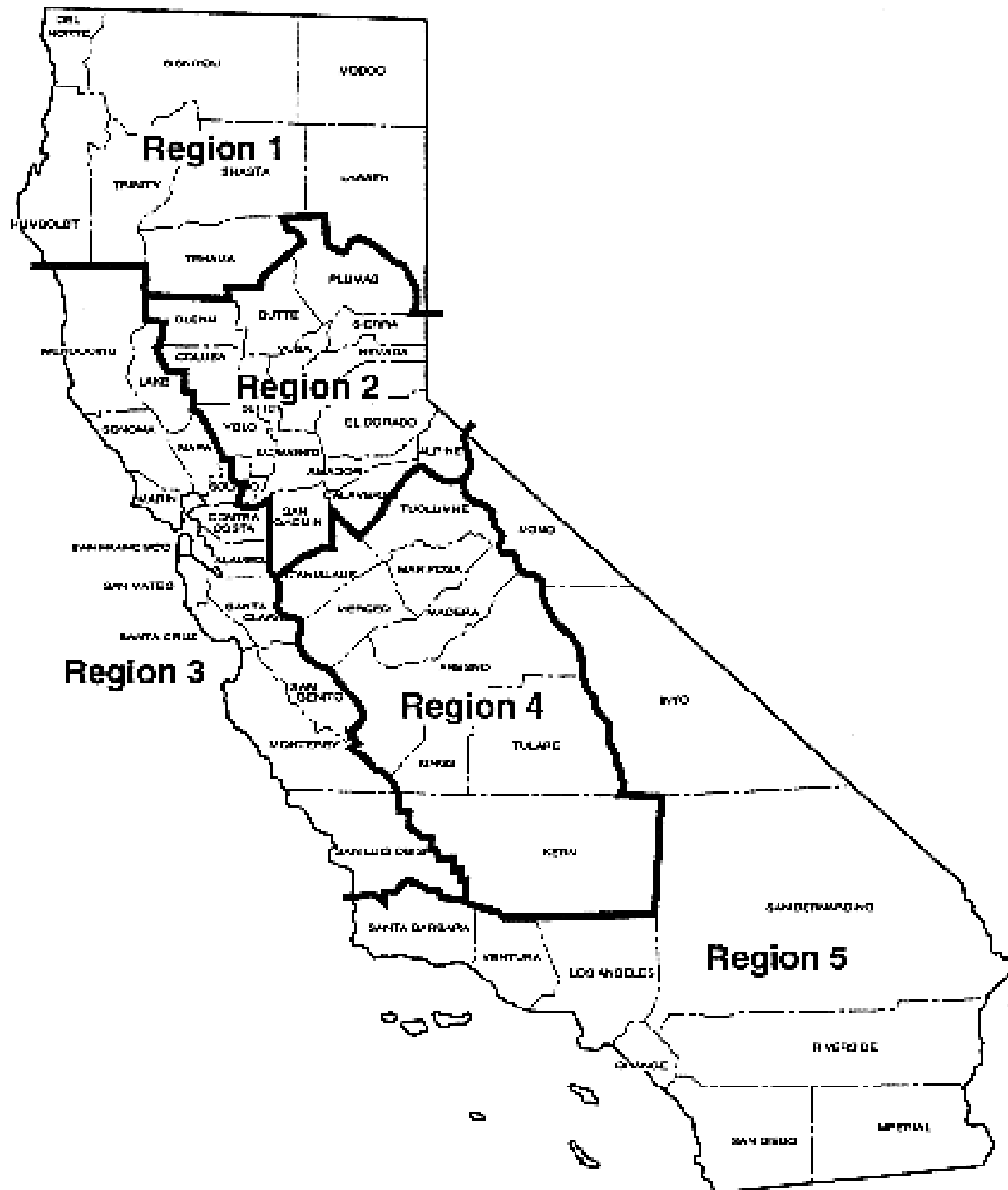
Where to Apply for a Permit. The initial contact with DFG should be with the regional office having jurisdiction in the city or county where the project will be constructed or implemented (Figure 14). DFG regional offices will provide the necessary information on requirements to obtain a Section 2081 Take Authorization and would have sample forms available.

Recommendations to Facilitate Environmental Review

- ❖ Use DFG's Natural Diversity Data Base as an initial check for listed species.
- ❖ Start early to survey for listed species.
- ❖ Tier off other CESA compliance documents (or ESA compliance documents, if appropriate) (including biological assessments, Biological Opinions, habitat conservation plans [HCPs], and NCCPs) for similar actions affecting the same listed species.

- ❖ Utilize CALFED FESA and CESA compliance documents via an ASIP, if appropriate.
- ❖ Utilize Section 2080.1 for species listed under ESA and CESA.
- ❖ Design the project description and construction plans and specifications to avoid listed species habitat.
- ❖ Use mitigation from the CVPIA PEIS and other NEPA and CEQA documents to satisfy mitigation requirements for listed species.
- ❖ Factor in mitigation requirements for listed species when preparing a NEPA or CEQA document.
- ❖ Involve DFG at early stages of the planning and permitting processes, even if the state-listed species is federally listed also.
- ❖ As an alternative to the Section 2081 process, obtain incidental take permission under CESA through the NCCP process.

Figure 14. California Department of Fish and Game Regional Offices



Section 1602 Lake or Streambed Alteration Agreement

Overview:

Effective January 1, 2004, the Legislature has revised the Lake or Streambed Alteration Agreement process. These changes have been incorporated into the following discussion. California Department of Fish and Game (DFG) regulates work that will substantially affect existing fish and wildlife resources associated with rivers, streams, and lakes in California, pursuant to Fish and Game Code Sections 1600-1616. Authorization (known as a Lake or Streambed Alteration Agreement) is required from DFG under Section 1602 for all entities prior to any action that substantially diverts or obstructs the natural flow of, or substantially changes or uses any material from the bed, channel, or bank of, any river, stream, or lake, or deposits or disposes of debris, waste, or other material containing crumbled, flaked, or ground pavement where it may pass into any river, stream, or lake.

Key Project Features/Issues Triggering Need For Compliance:

- ✓ *The action involves any activity that will divert or obstruct the natural flow or change the bed, channel, or bank of any river, stream, or lake*
- ✓ *The action involves the use or alteration of any streambed material*
- ✓ *The action occurs within the annual high-water mark of a wash, stream, or lake*

Timing:

DFG is required to issue a draft Lake or Streambed Alteration Agreement for projects within 60 days of receiving an adequate/complete written notification from the applicant.

Application to Restoration Plan Actions

Restoration Plan actions in most categories may require compliance with the DFG Lake or Streambed Alteration Agreement process; actions in the following categories are most likely to require compliance (see Table 3 in Chapter 3):

- ❖ Passage
- ❖ Relocation of diversions
- ❖ Channel and instream habitat modification
- ❖ Spawning gravel

❖ Meander belts

Any person, governmental agency, or public utility proposing any activity that will divert or obstruct the natural flow or change the bed, channel, or bank of any river, stream, or lake or proposing to use any material from a streambed must first notify DFG of such proposed activity. This notification requirement applies to any work undertaken within the 100-year floodplain of a body of water or its tributaries, including intermittent streams and desert washes. As a general rule, however, it applies to any work undertaken within the annual high-water mark of a wash, stream, or lake that contains or once contained fish and wildlife or supports or once supported riparian vegetation.

Typically, public agencies and private entities requesting a Lake or Streambed Alteration Agreement will complete a Section 1602 application and timber harvesters will complete a Section 1602 / 1611 Application. Actions involving ground-disturbing activities within the annual high-water mark of a wash, stream, or lake will require a Lake or Streambed Alteration Agreement.

Consultation Process

Projects that require a Lake or Streambed Alteration Agreement must comply with CEQA. The application/notification must include the following information:

- ❖ A detailed description of the project's location and a map;
- ❖ The name, if any, of the river, stream, or lake affected;
- ❖ A detailed project description, including, but not limited to, construction plans and drawings, if applicable, in addition to the effects of the activity, including type of soil to be removed, type of equipment and amount of water to be used, effects of water use on the lake or streambed, amount and type of material to be deposited in the stream or lake, and type and amount of vegetation affected;
- ❖ A copy of any CEQA document prepared for the activity or project;
- ❖ A copy of any other applicable local, state, or federal permit or agreement already issued, including a copy of any fish, wildlife, or habitat mitigation plan already prepared for the project;
- ❖ For state-designated wild and scenic rivers, a determination of the project's consistency with the California Wild and Scenic Rivers Act by the Secretary of Resources (until the Secretary determines the project is consistent with the California Wild and Scenic rivers Act, DFG cannot issue a valid agreement; a tentative agreement will be issued, contingent on a finding of consistency by the Secretary of Resources); and
- ❖ Any other information required by the department.

DFG evaluates a proposed lake or streambed alteration based on the anticipated impact on fish and wildlife resources. The initial negotiation, DFG coordination, and review of the draft documents will be

conducted at the appropriate DFG regional or division office. DFG conducts a project site inspection and provides recommendations on the proposed activity to the applicant issuing a draft agreement within 60 days of receiving a complete notification/application. The applicant then has 30 days to either accept or contest provisions contained in the draft agreement. If the applicant disagrees with the agreement as proposed by DFG, it must notify DFG in writing which triggers a meeting between DFG and the applicant with 14 days to resolve any disagreements. If no compromise can be reached the applicant has the option of requesting that an arbitration panel review the agreement. Most projects receive a Lake or Streambed Alteration Agreement within 2 months of receipt of the required information. Upon receipt of the draft Lake or Streambed Alteration Agreement, the applicant has 30 days to either accept or take issue with the terms. If the terms are not acceptable to the applicant, a meeting may be requested for the purposes of resolving any disagreement to take place within 14 days of such request. Additional time would be required if agreement was not reached and the issue was brought before an arbitration panel. In addition to the time limits imposed on the application process, agreements are limited to a 5 year term, subject to an additional 5 year extension, unless the requirements for a long-term agreement are met (see discussion below).

Long-term Agreements

Normally, agreements are limited to a 5 year term, subject to an additional 5 year extension, unless the requirements for a long-term agreement are met. A long-term agreement (> 5 years) can be entered into if the following conditions are met: (1) entity submits required notification information per section 1602; and (2) entity agrees to provide a status report to the DFG every four years delivered to DFG 90 days prior to the end of each four-year period. The status report must include: (1) copy of original agreement; (2) status of activities covered by the agreement; (3) evaluation of success or failure of measures in agreement; (4) discussion of any factors that could increase predicted adverse impacts on fish and wildlife resources, and description of the resources that may be adversely affected; and (5) DFG reviews the four-year report and conducts on-site inspections to confirm compliance and need for new measures (Appendix B includes a sample letter requesting a streambed alteration agreement and a letter of agreement from DFG).

Where to Inquire. Applicants should direct inquiries, notifications, and applications for proposed lake or streambed alterations to the regional DFG office in the area where the proposed project is located (Figure 14. California Department of Fish and Game Regional Offices).

Application Fee. All applicants must pay an application fee according a graduated schedule of fees to be established by the Department. The fee is limited in that it may not exceed five thousand dollars (\$5,000) unless the agreement is for a period of time greater than 5 years.

Recommendations to Facilitate Environmental Review

- ❖ DFG recommends that project applicants obtain any other required local, State, and federal permits and authorizations before contacting DFG about a Lake or Streambed Alteration Agreement. Applicants should contact city and county planning departments to determine whether any local permits are required for the project; they should also consult with other State agencies and with federal agencies that have permitting authority over the project to determine whether any other permits or authorizations are required.

- ❖ The applicant may simplify CEQA review and expedite the issuance of a final agreement by developing a draft Lake or Streambed Alteration Agreement in close consultation with DFG submitting an application package. Controversial issues may be resolved before the permitting process officially begins.
- ❖ Design the project description and construction plans and specifications to avoid activities within the annual high-water mark of a wash or bed, channel, or bank of any river, stream, or lake.

State Historic Preservation Officer Consultation under Section 106 of the National Historic Preservation Act

Overview:

Section 106 of the National Historic Preservation Act (NHPA) requires an agency to coordinate with the State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP) regarding the effects a project may have on properties listed, or eligible for listing, on the National Register of Historic Places (NRHP).

Key Project Features/Issues Triggering Need For Compliance:

- ✓ *The action is considered a federal agency proposal and occurs in an area where properties are listed, or are eligible for listing, on the NRHP*

Timing:

Depending on the resources affected, the Section 106 process may take 6 months to 1 year.

Application to Restoration Plan Actions

It is assumed that there will be federal involvement in most, if not all, of the Restoration Plan actions. Therefore, all categories of actions, except land acquisition and water acquisitions, may require consultation and coordination with the SHPO and the ACHP in compliance with the NHPA; actions in the following categories are most likely to require compliance (see Table 3 in Chapter 3):

- ❖ Fish screens
- ❖ Passage
- ❖ Relocation of diversions
- ❖ Channel and instream habitat modification
- ❖ Spawning gravel
- ❖ Meander belts

The NHPA establishes the national policy and the legal and administrative rules and procedures to protect and encourage the preservation and wise use of historic resources. NHPA authorizes the U.S. Department

of the Interior to establish the NRHP, which is maintained by the National Park Service (NPS). The NRHP includes a listing of properties that have been nominated and accepted as having historic, architectural, engineering, or cultural significance at the national, state, or local level. The NHPA establishes the responsibilities of each SHPO for developing a statewide plan for preservation, surveying, and assessing surveys by others to identify historic properties, nominating properties for listing on the NRHP, providing technical assistance to government agencies and the public, participating in the review of federal undertakings and permit actions that affect historic properties, and other activities. The NHPA also creates the ACHP, an independent federal agency responsible for advising the President and Congress of the United States on historic preservation matters and reviewing and commenting on agency actions that may affect historic properties.

Consultation

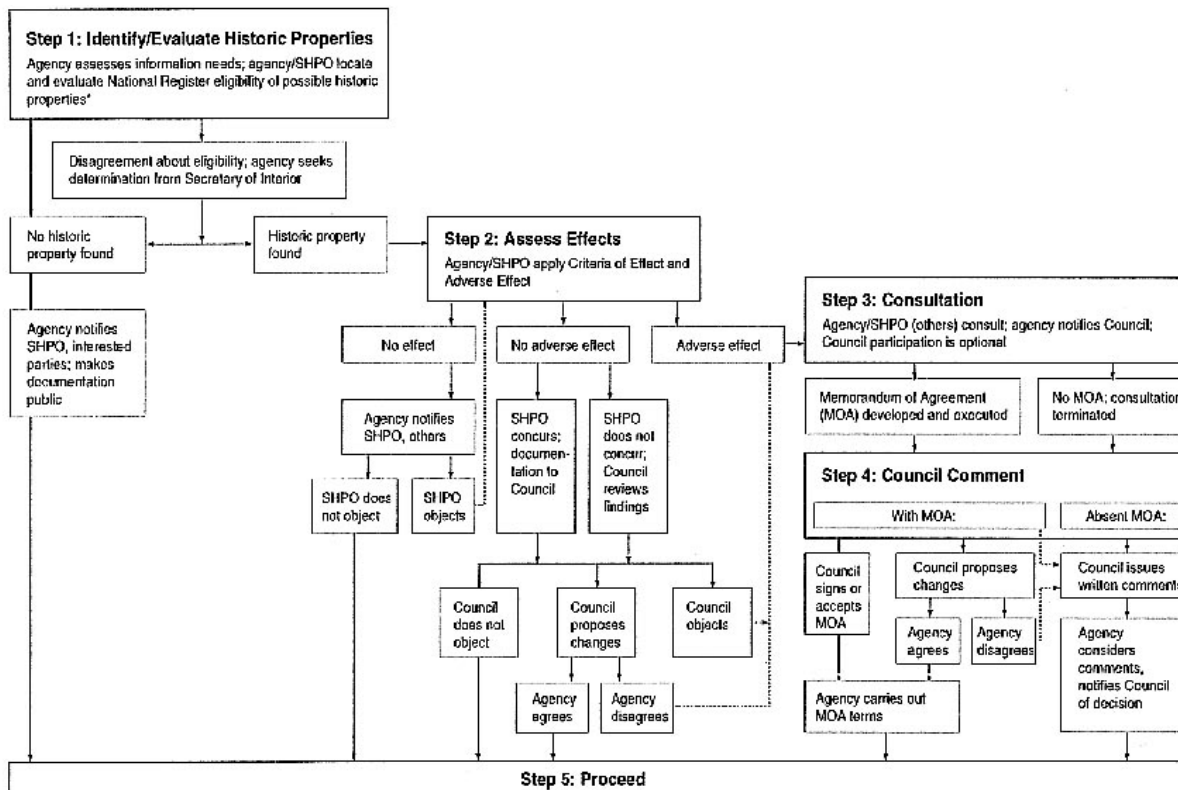
Section 106 of the NHPA defines the purpose and requirements of the federal review process to ensure that historic properties are considered during federal project planning and execution under the administration of the ACHP. The federal agency involved in a proposed project is responsible for initiating and completing the Section 106 review process. In general, Section 106 requires the federal agency to consult with the SHPO regarding a proposed project's effect on properties listed, or eligible for listing, on the NRHP. Other agencies may work with the SHPO and the ACHP throughout the process and may include other participants (e.g. federal and nonfederal agencies; Native American tribes; applicants for federal grants, licenses, or permits) when proposed actions may affect their interests or activities.

All Restoration Plan actions undertaken by federal agencies and related federal agency permit actions will require coordination with the SHPO in accordance with applicable federal laws and guidelines to provide protection to resources of historic, cultural, and archaeological importance. If federal funds or permits are involved in a proposed action, the project must comply with requirements of Section 106 of the NHPA.

How to Proceed with Consultation

Before consulting with the SHPO, the federal agency should review any programmatic agreements that may have been entered into by the agency and the SHPO and the ACHP. The programmatic agreement may contain the appropriate mitigation that, if incorporated into the proposed project, may make further Section 106 compliance unnecessary. There are five basic steps in the Section 106 process (described below and shown in Figure 15) during which the federal agency works with the SHPO to assess the potential effects of proposed actions:

Figure 15. The Basic Steps of Section 106 Review



Step 1. Identify and Evaluate Historic Properties. The federal agency reviews all available information that could help determine whether there may be historic properties in the area of a proposed activity and identifies all NRHP-listed properties and those that may be eligible for listing.

As part of this process, a project proponent or permit applicant other than the federal agency may prepare a cultural resources survey for consideration and processing by the federal agency. In such cases, a report documenting the results of the survey must be submitted to the federal agency that is proposing, funding, or permitting the project to be transmitted to the SHPO.

Step 2. Assess Effects. Once historic properties have been identified and found to meet NRHP criteria, the federal agency determines whether the proposed action will affect the properties in any way. There are three possible findings:

- ❖ *No effect.* If there will be no effect of any kind on the historic properties, the agency notifies SHPO and interested parties of its determination. If the SHPO does not object, the agency may proceed with the project.
- ❖ *No adverse effect.* If there could be an effect, but the effect would not be harmful to the historic property, the agency obtains SHPO concurrence and submits a determination of no adverse effect

to the ACHP, or the agency can submit its determination of no adverse effect directly to the ACHP for review and notify the SHPO of this action. Unless the ACHP objects, the agency proceeds with its project or activity.

- ❖ *Adverse effect.* If there could be a harmful effect on a historic property, the agency begins the consultation process.

The project proponent or permit applicant may also prepare a report assessing the effect of the action on the properties listed or eligible for listing on the NRHP. If the survey and report are found to be adequate, the SHPO submits an approval letter to the federal agency, thereby allowing the agency to proceed with permitting or funding the project.

Typical steps for completing a cultural resources survey that would meet Section 106 requirements are as follows:

- ❖ Define the area of potential effects (APE),
- ❖ Notify any concerned or potentially interested Native American persons or groups,
- ❖ Conduct a records search to determine whether the APE has already been surveyed or whether there are any recorded sites in the APE,
- ❖ Conduct a site survey of the APE if one has not already been conducted,
- ❖ Document any artifacts that are found during the survey,
- ❖ Develop recommendations for additional survey or preservation work if cultural resources are found during surveys, and
- ❖ Redesign the project to avoid or minimize effects on cultural resources.

Step 3. Consultation. During this step, an effort is made to find acceptable ways to reduce the adverse effect on the historic property. The consulting parties are the agency and the SHPO and may include the ACHP and other interested parties (i.e. permit applicants). When the consulting parties agree on steps to reduce or avoid harm to historic property, they may sign a memorandum of agreement (MOA).

Step 4. Council Comment. Unless the ACHP has already signed the MOA as a consulting party, the agency submits the MOA to the ACHP for review. The ACHP can accept the MOA, request changes to it, or issue written comments on the proposal.

Step 5. Proceed. If the Section 106 review process has resulted in an ACHP-accepted MOA, the agency proceeds with its proposed activity according to the terms of the MOA. After the process is complete, the SHPO files the report with one of the regional information centers of the California Historical Resources File System.

Additional SHPO and ACHP coordination would be required for proposed projects and permits that involve federal property or funding under the jurisdiction of the U.S. Department of Transportation or its agencies in compliance with the Section 4(f) of Department of Transportation Act, as amended, and the

Federal-Aid Highway Act of 1968. These efforts focus on identification and assessment of project-related, publicly owned park lands and recreation areas of national, state, or local significance.

Where to Apply:

Office of Historic Preservation
Department of Parks and Recreation
P.O. Box 942896
Sacramento, CA 94296-0001
916/653-6624
Fax: 916/653-9824

Appendix B includes a sample letter to the SHPO related to application for a Corps Section 404 permit.

Recommendations to Facilitate Environmental Review

- ❖ Coordinate with the SHPO during the planning, design, and construction phases of the project to ensure compliance with requirements to protect significant cultural resources.
- ❖ Tier off other NEPA and/or CEQA compliance documents, including relevant Section 106 Agreements such as programmatic agreements and memoranda of understanding, for similar actions affecting similar types of properties to the extent possible.
- ❖ Start early to survey areas for historic properties.
- ❖ Involve experts according to the region and types of properties involved.
- ❖ Design the project description and construction plans and specifications to avoid affecting historic properties and cultural resource sites.
- ❖ Plan for extensive SHPO and ACHP coordination periods in the project schedule.
- ❖ Resolve all cultural resource issues regarding impacts and mitigation prior to contacting SHPO.
- ❖ Use mitigation from the CVPIA PEIS or other NEPA and CEQA documents to satisfy mitigation requirements.
- ❖ Factor in mitigation requirements of the SHPO and the ACHP for effects on properties when preparing a NEPA or CEQA document.

Authorities

- ♦ 36 CFR Parts 60 and 63 (eligibility of properties for listing on the National Register of Historic Places)
- ♦ 36 CFR Part 61 (procedures for approved state and local government historic preservation programs)
- ♦ 36 CFR Part 62 (identification and listing on National Registry of Natural Landmarks)
- ♦ 36 CFR Part 65 (national historic landmarks program)
- ♦ 36 CFR Part 800 (protection of historic properties)
- ♦ 43 CFR Part 801 (protection of archaeological resources, uniform regulations)
- ♦ 16 USC 469 (Archaeological and Historic Preservation Act of 1974, as amended)
- ♦ 16 USC 470 (National Historic Preservation Act of 1966, as amended; especially Section 106)
- ♦ 49 USC 303, Section 4(f) (Department of Transportation Act of 1966, as amended)

State Lands Commission Land Use Lease

Overview:

The State Lands Commission (SLC) has jurisdiction and management control over those public lands received by the state upon its admission to the United States in 1850 (also known as "sovereign lands"). Generally, these sovereign lands include all ungranted tidelands and submerged lands and beds of navigable rivers, streams, lakes, bays, estuaries, inlets, and straits. The SLC manages these sovereign lands for the benefit of all the people of the state, subject to the public trust, for water-related commerce, navigation, fisheries, recreation, open space, and other recognized public trust uses. SLC's Land Management Division administers the surface uses of state-owned sovereign lands under SLC's jurisdiction. Examples of activities that would require SLC authorization include, but are not limited to, implementation of habitat management plans, installation of structures, sand and gravel extraction, and dredging or disposal of dredged materials on the state's lands.

Key Project Features/Issues Triggering Need For Compliance:

- ✓ *The action occurs in tideland; submerged land; the bed of a navigable river, stream, lake, bay, estuary, inlet, or strait; swamp land, or overflowed land*
- ✓ *The action would affect water-related commerce, navigation, fisheries, recreation, open space, or other public trust uses*

Timing:

The application process may take 2-3 months for simple transactions, or as much as a year or more for more complex projects.

Application to Restoration Plan Actions

Restoration Plan actions in most categories are likely to require compliance with the SLC land use lease and other authorizations; actions in the following categories are most likely to require compliance:

- ❖ Spawning gravel
- ❖ Meander belts

The SLC is charged with the administration of certain state-owned lands: sovereign lands that lie in the beds of tidal and navigable water bodies within the state's boundaries, and school lands that were granted to the state by the federal government to support public schools.

California received title to its sovereign lands upon its admission to the United States to be held for the benefit of all of its people, subject to the public trust for water-related commerce, navigation, fisheries, recreation, and open space.

The boundaries of the state's sovereign lands are generally based on the extent and location of the subject waterways as they last naturally existed, prior to artificial accretions. On tidal waterways, the state owns fee title to the bed of the river below the last natural ordinary high-water mark. In some cases, particularly in the Bay Area during the 1800s, the state sold some of its tidelands, lands lying between the ordinary high- and low-water marks. In these cases, the state retains a public trust easement over the sold tidelands. On non-tidal navigable waterways, the state holds fee title to the bed below the last natural ordinary low-water mark and holds a public trust easement over privately owned lands between the last natural ordinary low- and ordinary high-water marks. Very often, the precise location of these boundaries is uncertain. Boundaries may be established through agreement or court judgment.

The state can no longer sell its sovereign lands, but SLC may lease the sovereign fee lands for various public trust purposes. A lease will be required for any projects involving the construction of structures on the sovereign fee lands, and for some activities that do not include such improvements. SLC leases and other agreements may be designed to encompass activities or projects that will occur over an extended period or geographic scope, provided such activities meet specific criteria.

Private owners may use their lands that remain subject to the state's public trust easement for any purpose consistent with public trust needs in the area. SLC may become involved in assessing public trust needs in evaluating projects proposed to be located within the easement area.

Projects may require the specific uses of, or improvements to, state-owned lands managed by SLC and therefore will require compliance with the purposes of public trust.

Land Use Leases and Other Use Authorizations

SLC authorization for activities such as those discussed above is most often in the form of an SLC lease; occasionally, SLC may enter into other types of agreements that authorize specific uses. Implementation of specific Restoration Plan actions may be subject to SLC leasing requirements.

How to Apply

Project proponents wishing to undertake activities on state-owned lands under SLC's jurisdiction should consult with SLC early in their planning process to determine whether SLC authorization will be necessary. If it is, the proponents will be provided with an application form and guidance on how to complete and submit the form. The application will ask for information including, but not limited to, the following:

- ❖ A description of the state-owned land on which the project is to be located, where possible by reference to a legal description, assessor's parcel number, deed, or map;
- ❖ A project description, including proposed use, the nature and extent of proposed improvements, methods of construction, anticipated project life, and any relevant time constraints;
- ❖ Evidence of the proponent's entitlement to use adjoining uplands to access the state-owned parcel; and

- ❖ Environmental information, including, but not limited to, a description of the environmental setting and potential environmental impacts of the proposed project.

SLC staff will review project applications relative to several standards, including, but not limited to:

- ❖ Whether the proposed project is consistent with the trusts under which SLC holds the lands (in the case of sovereign lands, the public trust for water-related commerce, navigation, fisheries, recreation, and open space);
- ❖ Whether the proposed land use may have a significant effect on the environment;
- ❖ Whether the proposed use will be subject to rental requirements and, if so, whether the state is assured a fair return for the use of its lands; and
- ❖ Whether authorization of the proposed project is in the best interests of the state.

After staff review of the project application, a lease or other authorizing agreement is prepared and presented to SLC for formal approval. The application process may take as little as 2-3 months for simple transactions, or as much as a year or more for complex projects.

The permit application and review process is shown in Figure 16. Appendix B includes a sample SLC information packet and application.

Where to Apply

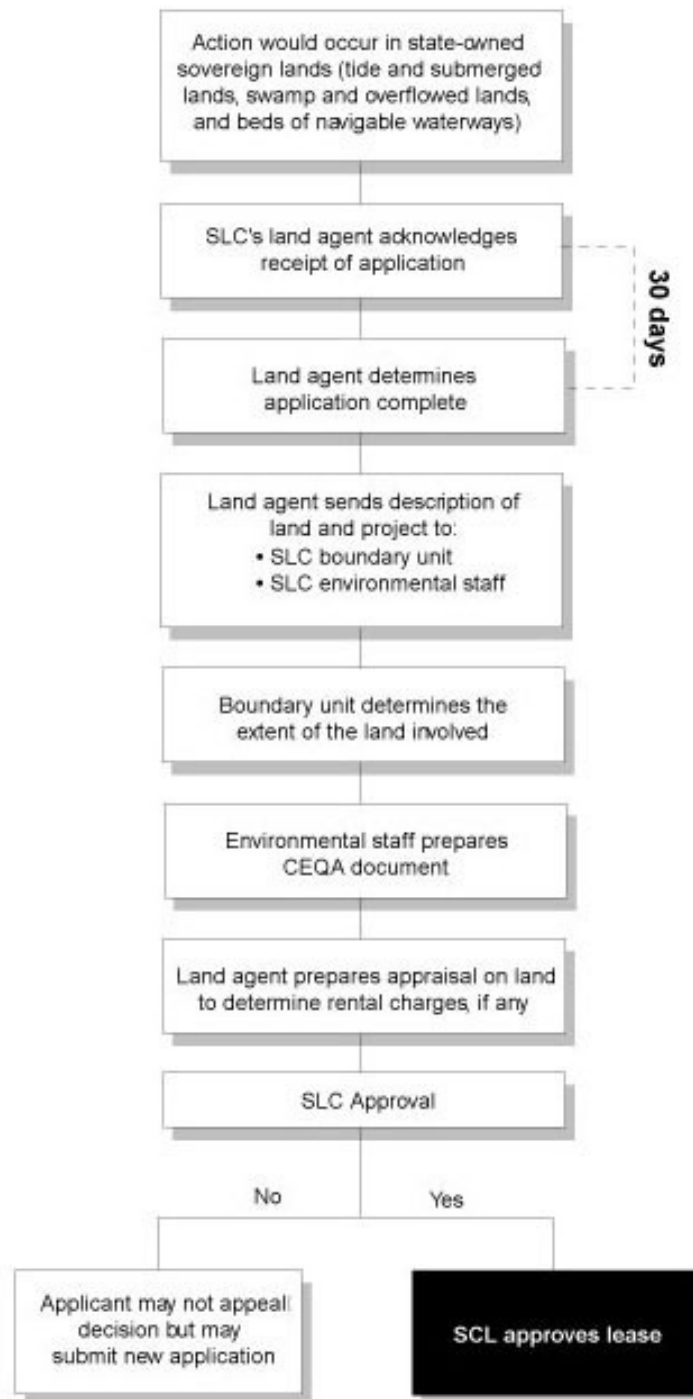
Applications may be obtained from the SLC Land Management Division at the following address:

The State Lands Commission
Land Management Division
100 Howe Avenue, Suite 100 South
Sacramento, CA 95825
916/574-1900
Fax: 916/574-1945

Application Fee

The applicant will also be requested to submit a \$25 nonrefundable filing fee and will be asked to reimburse SLC for its costs in processing the application. Application processing costs generally range from approximately \$400 for simple leases involving small parcels and projects without any possibility of environmental impact, to several thousands of dollars for complex agreements that resolve title issues and authorize large projects with significant environmental impacts.

Figure 16. State Lands Commission Land Use Lease Application Process



Recommendations to Facilitate Environmental Review

- ❖ Consult with SLC early to identify SLC involvement.
- ❖ Design project description and construction plans and specifications to avoid conducting activities within tideland; submerged land; and beds of navigable rivers, streams, lakes, bays, estuaries, inlets, or straits; swamp land; or overflowed land.
- ❖ Coordination with other concerned agencies (e.g. U.S. Army Corps of Engineers [Corps], U.S. Environmental Protection Agency [EPA], U.S. Fish and Wildlife Service [USFWS], National Marine Fisheries Service [NOAA Fisheries], and related state agencies) may also be advisable or required for proposed dredging activities.
- ❖ Develop a master lease agreement for like activities within particular geographic areas.

Authorities

- ♦ Sections 6303, 6321, and 6890, Public Resources Code

Reclamation Board Encroachment Permit

Overview:

The Reclamation Board issues encroachment permits to maintain the integrity and safety of flood control project levees and floodways that were constructed according to the flood control plans adopted by the Board or the California Legislature. Flood control plans include project flood channels without levees and project channels with levees and an additional area outside of the project levees; any flowage areas that are part of the flood control project; areas where there are flowage easements; and in the case of designated floodways, the area between the encroachment lines. Project levees, floodways, and flood control plans are components of project works. Project works are defined as the entirety or any component of a flood control project within the area of the Board's jurisdiction that has been approved or adopted by the Board or the Legislature, including state or federally constructed levees, bank protection, weirs, pumping plants, any other related flood control works, or rights-of-way (ROWS).

Key Project Features/Issues Triggering Need For Compliance:

- ✓ *The action would affect existing state flood control project facilities, including levees, dams, reservoirs, and floodways and flood control plans*

Timing:

Permit issuance may take approximately 5 months (see Figure 17).

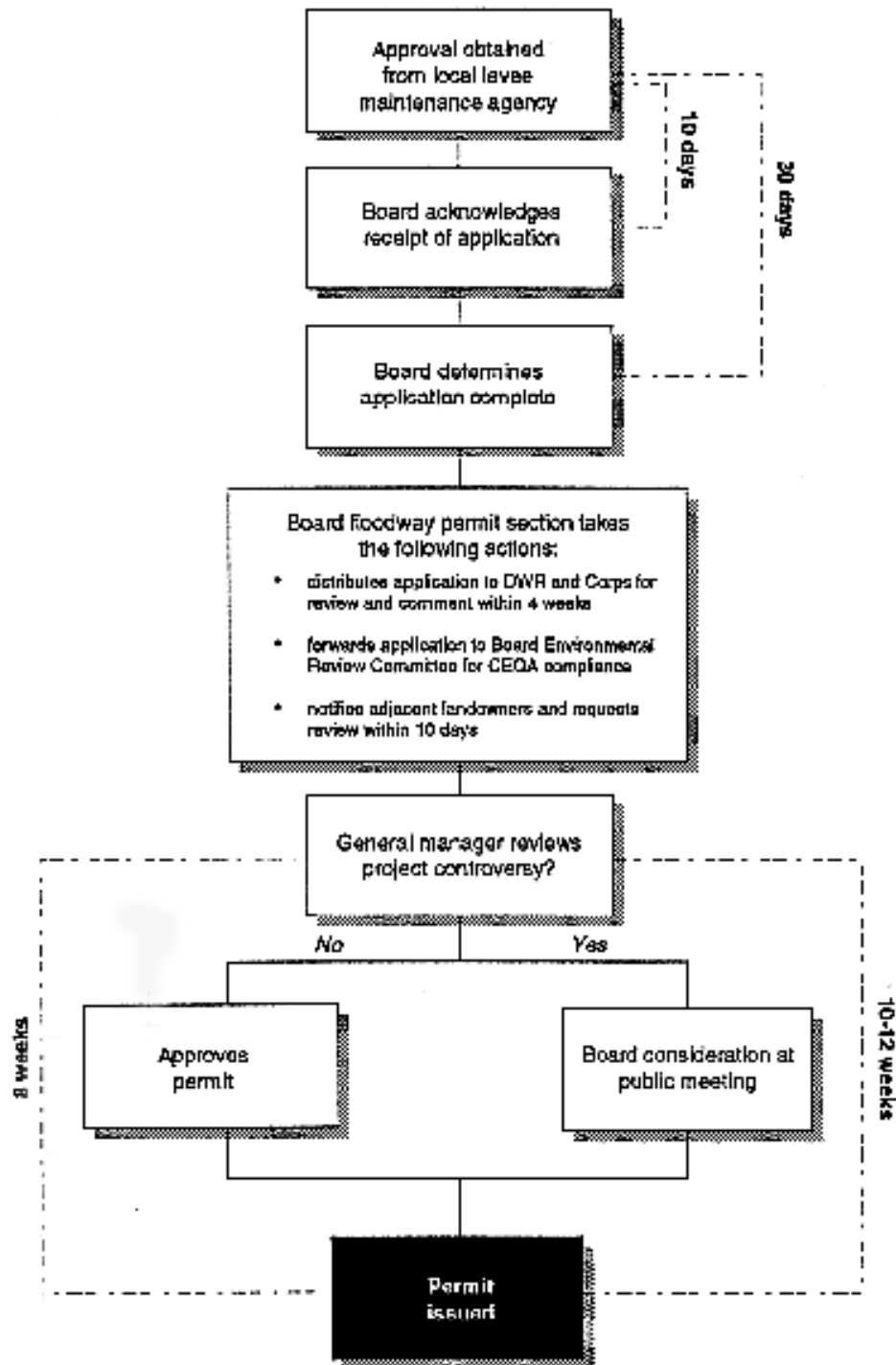
Application to Restoration Plan Actions

Restoration Plan actions in the categories of fish screens, passage, relocation of diversions, channel and instream habitat modification, spawning gravel, riparian habitat, meander belts, and watershed management are likely to require compliance with The Reclamation Board's encroachment permit process. Actions in the following categories are most likely to require compliance (see Table 3 in Chapter 3):

- ❖ Relocation of diversions
- ❖ Meander belts

The Reclamation Board is required to enforce appropriate standards for construction, maintenance, and protection of adopted flood control plans that will best protect the public from floods. The Reclamation Board has jurisdiction within the Central Valley and Lake County, including all tributaries and distributaries of the Sacramento and San Joaquin Rivers and Tulare and Buena Vista Basins.

Figure 17. State Reclamation Board Encroachment Permit Application Process



The Reclamation Board may issue encroachment permits for proposed activities that may affect project works, as long as the applicant ensures that the activity maintains the integrity and safety of flood control project levees and floodways and is consistent with the flood control plans adopted by The Reclamation Board or California Legislature. "Project works" are defined as the entirety or any component, including levees, floodways, or flood control plans, of a flood control project within the area of The Reclamation Board's jurisdiction that have been approved or adopted by The Reclamation Board or the legislature. Project works include state or federally constructed levees, bank protection, weirs, pumping plants, and any other related flood control works or ROWs. Flood control plans include project flood channels without levees and project channels with levees; any flowage areas that are part of the flood control project; areas where there are flowage easements; and designated floodways.

Permits and Consultation

Project-specific actions may involve work within the jurisdiction of The Reclamation Board, including placement, construction, reconstruction, removal, or abandonment of any landscaping, culvert, bridge, conduit, fence, projection, fill, embankment, building, structure, obstruction, encroachment, or works of any kind, and including the planting, excavation, or removal of vegetation and any repair or maintenance that involves cutting into the levee, wholly or in part, within any area for which there is an adopted plan of flood control. These project-specific actions must be approved by The Reclamation Board before beginning work. The project applicant should contact The Reclamation Board for a list of project levees and designated floodway areas.

How to Apply for a Permit

Before submitting an application for an Encroachment Permit to The Reclamation Board, the application must be endorsed by the agency responsible for maintaining levees within the area of the proposed work (such as a reclamation district, drainage district, flood control district, levee district, county, or city). If the maintaining district delays or declines to endorse the application, it may be submitted to The Reclamation Board without endorsement with a written explanation as to why the application was not endorsed by the maintaining district. In addition, the application should include the following information:

- ❖ A description of the proposed work, including a statement of the dates the planned construction will be initiated and completed;
- ❖ A completed copy of The Reclamation Board's environment assessment questionnaire and a copy of any draft and final environmental review document prepared for the project;
- ❖ Complete plans and specifications showing the proposed work, including a location map showing the site of the work with relation to topographic features, a plan view of the area, and an adequate cross section through the area of the proposed work. The plans must be drawn to scale and refer to National Geodetic Vertical Datum or other known datum. The plans must also indicate any project features such as levees, channels, roads, or other structures and must show river or levee mile references. The dimensions of any proposed or existing fill, excavation, and construction activity must be given;

- ❖ Additional information, such as geotechnical exploration, soil testing, hydraulic or sediment transport studies, biological surveys, environmental surveys, and other analyses, may be required at any time prior to The Reclamation Board's action on the application; and
- ❖ The names and addresses of all landowners adjacent to the property on which the project is located.

The Reclamation Board uses three general standards to evaluate applications for Encroachment Permits:

- ❖ Conformance with The Reclamation Board's adopted standards for encroachments;
- ❖ Conformance with any designated floodway plan for the project area; and
- ❖ The environmental effect of the action.

The Reclamation Board's regulations outline prohibited activities, acceptable construction methods, and conditions for approval of all work regulated by The Reclamation Board. This regulations also contain conditions for approval of all work in specified geographical areas with unique environmental features. The permit application and review process is shown in Figure 17 (State Reclamation Board Encroachment Permit Application Process).

Appendix B includes a sample information packet and application.

Where to Apply for a Permit

Applications should be submitted to:

The Reclamation Board
Floodway Permit Section
3310 El Camino Avenue, Room LL40
P.O. Box 942836
Sacramento, CA 94236

Permit Application Fee

No application fee is required.

Recommendations to Facilitate Environmental Review

- ❖ Coordinate with the local reclamation district during the planning and design phase of the Restoration Plan action to identify compliance needs, commitments, and mitigation options and to resolve issues prior to contacting The Reclamation Board for permit processing.
- ❖ Design the project description and construction plans and specifications to avoid flood control facilities and properties.

Authorities

- ♦ Section 8571, Water Code
- ♦ Sections 8534, 8608, 8611, 8710, and 8730.3, Water Code
- ♦ Section 2090, Fish and Game Code
- ♦ Sections 21080.3, 21104.2 and 21160, Public Resources Code

Approval of Plans and Specifications to Construct or Enlarge a Dam or Reservoir and Certificate of Approval to Store Water and to Repair or Alter a Dam or Reservoir

Overview:

Any person who proposes to construct or enlarge a dam or reservoir must obtain written approval from the California Department of Water Resources (DWR) Division of Safety of Dams (DSOD) for the plans and specifications. Restoration Plan actions that may require this approval include construction and modification of dams, levees, artificial ponds, or other structures that are under DSOD jurisdiction.

Key Project Features/Issues Triggering Need For Compliance:

- ✓ *The action involves construction, modification, or enlargement of a dam or reservoir*
- ✓ *The action involves the repair or alteration of an existing dam or reservoir*

Timing:

The approval process may take 6 months (see Figure 18).

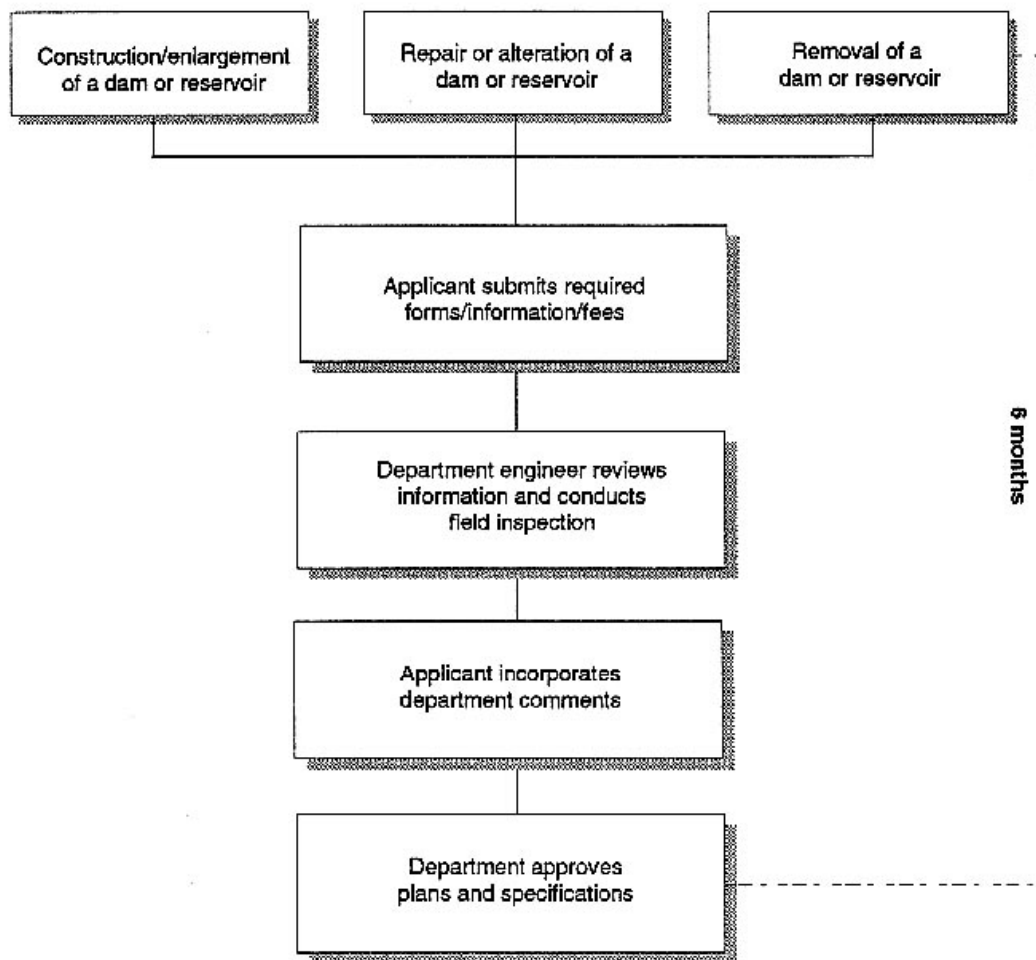
Application to Restoration Plan Actions

Restoration Plan actions in the categories of passage, watershed management, temperature management, and water quality are likely to require compliance with the DSOD Certificate of Approval process; actions in the following categories are most likely to require compliance (see Table 3 in Chapter 3):

❖ Passage

DWR is responsible for the state's water resources planning and water management and operating the State Water Project (SWP). DWR is also responsible for water supply planning, flood forecasting and management, snow surveys, and many other water resource-related functions. DWR's DSOD is responsible for permitting and approval of dams and water storage reservoirs.

Figure 18. California Department of Water Resources Division of Safety of Dams Certificate of Approval Process



Approvals and Consultation

The applicant must obtain a Certificate of Approval from DSOD to impound water after the new or enlarged dam is built. DSOD has established criteria that define a dam as an artificial barrier to impound or divert water that:

- ❖ Is or will reach a height of at least 25 feet above the natural bed of the water course at the downstream toe of the barrier to the maximum possible water storage elevation;
- ❖ Is or will reach a height of at least 25 feet above the lowest outside elevation to the maximum possible water storage elevation, if the barrier is not across a stream channel; or
- ❖ Has or will have an impounding capacity of at least 50 acre-feet of water.

The following projects need not obtain approval from DWR:

- ❖ Dams or levees with a height of 6 feet or less, regardless of impounding capacity;
- ❖ Dams or levees of any height if the impounded capacity is 15 acre-feet or less;
- ❖ Obstructions in a canals used to raise, lower, or divert water;
- ❖ Levees or railroad, road, or highway fills or structures;
- ❖ Steel or concrete circular tanks or tanks elevated aboveground;
- ❖ Barriers not across stream channels, watercourses, or natural drainage areas that are used to impound water for agricultural purposes or for sewage sludge-drying facilities; and
- ❖ Barriers with a height of 15 feet or less in the channel of a stream or watercourse used to spread water upstream for groundwater percolation.

Restoration Plan actions that may require this approval include construction or alteration of existing dams, levees, artificial ponds, or other structures that are under DSOD jurisdiction. Anyone who proposes to alter a dam or reservoir must obtain written approval from DSOD for the plans and specifications. The applicant must obtain a revised Certificate of Approval from DSOD to alter the dam or reservoir.

Enlargement of a dam may fall under the jurisdiction of the Federal Energy Regulatory Commission if there is a power component to the enlargement. If the enlargement would inundate a substantial area, USFS or other agency may require an EIS or a joint EIR/EIS with the lead state or local agency. The permit application and review process is shown in Figure 18 (California Department of Water Resources Division of Safety of Dams Certificate of Approval Process).

How to Apply

An applicant should submit a separate application for each project using Form DWR-4, "Application for Approval of Plans and Specifications for the Repair of a Dam or Reservoir." The applicant should submit two copies of the plans and specifications for alterations or repairs to the dam and reservoir.

An applicant should submit a separate application for each project using Form DWR-3, "Application for Approval of Plans and Specifications for the Construction or Enlargement of a Dam and Reservoir." The applicant should submit two copies of the plans and specifications for the dam and reservoir showing the arrangement.

Where to Apply

Applications should be directed to:

California Department of Water Resources
Division of Safety of Dams
P.O. Box 942836
Sacramento, CA 94236-0001
916/227-4644

Application Fee

DSOD charges a minimum filing fee of \$100 for dam or reservoir construction or enlargement projects; application fees vary with the estimated cost of the dam. Applicants should contact DWR to receive updated fee information. DSOD charges a fee for dam or reservoir repair or alteration only if DWR is required to be lead agency for CEQA compliance.

Recommendations to Facilitate Environmental Review

- ❖ Consult with DWR/DSOD in the early stages of project planning to identify any special dam design features that may be recommended or required for the proposed dam size and location. Continue coordination throughout the permit application process to identify and resolve issues that may arise.
- ❖ Consult with DWR/DSOD to determine what type of dam failure risk analysis is required, if any.

Authorities

- ♦ California Administrative Code, Title 23, Chapter 2
- ♦ California Water Code, Division 3, Parts 1 and 2

California Department of Transportation

Encroachment Permit/Right-of-Way

Overview:

The California Department of Transportation (Caltrans) is responsible for planning, designing, constructing, operating, and maintaining state-owned roadways. Caltrans issues permits for projects affecting areas within the rights-of-way (ROWs) of state-owned roadways. Caltrans issues permits to encroach on land within its jurisdiction to ensure that the proposed encroachment is compatible with the primary uses of the state highway system, ensure the safety of both the permittee and the highway user, and protect the state's investment in the highway facility.

Key Project Features/Issues Triggering Need For Compliance:

- ✓ *The action would be located within the right-of-way (ROW) of state-owned roadway, including bridge alterations*
-

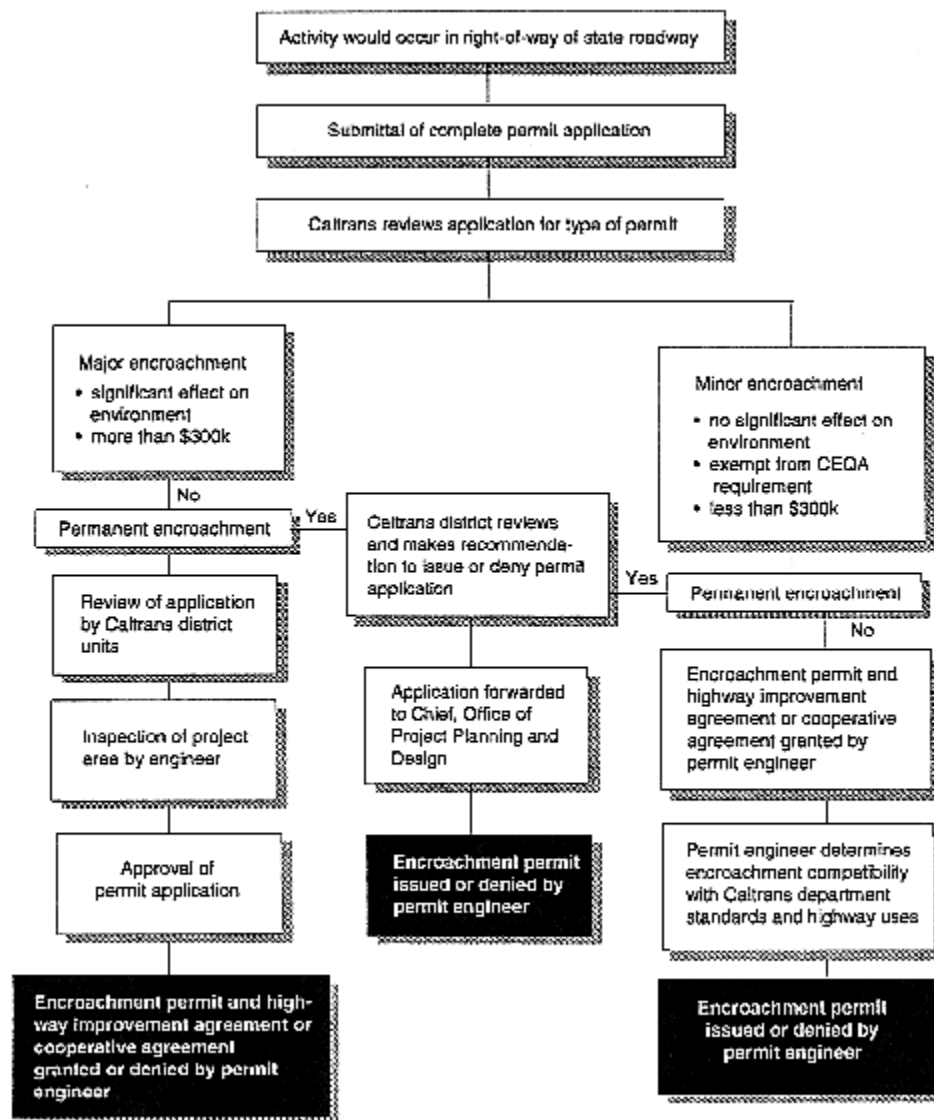
Application to Restoration Plan Actions

Restoration Plan actions in the categories of relocation of diversions, riparian habitat, meander belts, watershed management, and facilities management are likely to require compliance with the Caltrans Encroachment Permit process (see Table 3 in Chapter 3).

Permits and Consultation

Proponents of Restoration Plan actions proposed within, under, or over the state highway ROW (e.g. rerouting and protecting infrastructure; opening or excavating a state highway for any purpose; constructing and maintaining road approaches or connections to or grading within the ROW on any state highway; or placing, changing, or renewing an encroachment) are required to obtain an Encroachment Permit. Work in the ROW that costs more than \$300,000 will require a Highway Improvement Agreement or a Cooperative Agreement from Caltrans in addition to an Encroachment Permit (the permit application and review process for an Encroachment Permit is shown in Figure 19).

Figure 19. California Department of Transportation Encroachment Permit Process



An encroachment requiring permanent access or maintenance in freeway or expressway ROWs can be considered for a permit only if the following restrictions are met:

- ❖ The encroachment is related to a public facility or utility dedicated to public use;
- ❖ Alternative locations for the encroachment are inordinately difficult or unreasonably costly;
- ❖ The encroachment is as near as possible to the outer boundary of the ROW; and

- ❖ The encroachment is approved by the Chief, Office of Project Planning and Design in Caltrans and possibly Federal Highway Administration when federal facilities or funds are also affected.

How to Apply for a Permit

A complete description and detailed plans of the proposed work and existing facilities within the state highway ROW, including an estimate of the cost of work within the ROW and a full description of the route and method by which the facility owner will gain ingress and egress to the encroaching facility for maintenance purposes must be provided.

Caltrans evaluates the permit application to determine:

- ❖ How the encroachment may disrupt traffic or result in potential hazards to other highway users;
- ❖ How the encroachment may impair the design, construction, operation, maintenance, or integrity of the highway;
- ❖ How the project proponent will restore the highway to its original conditions, including landscaping and drainage; and
- ❖ How the proposed encroachment will affect the aesthetics of the highway.

Permit applications are processed differently, depending on the type of encroachment. If the proposed encroachment is minor and will have no significant effect on the environment or is exempt from the requirements of CEQA, a Caltrans permit engineer will review the application to determine whether the encroachment is compatible with other highway uses and conforms to Caltrans standards.

If the proposed encroachment is major (e.g. requiring access to a subdivision or a transmission line), the permit engineer inspects the project area. Other Caltrans district units (e.g. Traffic, Design, and Environmental) may review the application to determine the proposed encroachment's effect on use of the state highway and on the environment. If these units find the encroachment acceptable, the permit engineer issues the permit. Time to complete this process, varies depending on the complexity of the project.

For proposed encroachments requiring permanent access or maintenance in freeway or expressway ROWs, the Caltrans district reviews the application and recommends approval or denial of the application. If approval is recommended, the permit engineer will forward it to the Chief, Office of Project Planning and Design, who generally follows the recommendation and returns the application to the permit engineer, who issues the permit. Permits are seldom granted unless special circumstances require them.

Where to Apply for a Permit

Project proponents should direct inquiries and permit applications to the local Caltrans district office or telephone Caltrans' Sacramento headquarters at 916/654-4961 for the location of the local Caltrans district office. Project proponents should complete Caltrans' Standard for Encroachment Permit Application, which can be obtained from district offices.

Permit Application Fee

Caltrans' fee varies according to the amount of effort required to review and inspect the proposed Encroachment Permit work. The fee is based on an hourly charge, which is subject to change as necessary to cover expenses. The fee is estimated at the time the application is submitted, and a deposit is required of all applicants (except public agencies and utilities) before further processing. Public agencies are exempt from fees, and public utilities are billed for fees at a later date.

Caltrans also may require the applicant to submit a Caltrans Encroachment Permit Performance Bond. If a bond is required, Caltrans will determine the amount. Caltrans normally will not require a bond from public agencies or public utilities.

Recommendations to Facilitate Environmental Review

- ❖ Coordinate with the local Caltrans district during the planning and design phase of the project if an encroachment permit is required to identify compliance needs, commitments, and mitigation options, and to resolve issues prior to permit processing.
- ❖ Design the project description and construction plans and specifications to avoid transportation facilities under state jurisdiction.
- ❖ Try to design the project so that any encroachment will be minor.
- ❖ Try to design the project so that any encroachment will be temporary.

Authorities

- ♦ California Streets and Highways Code Section 660-734

Air Districts Authority to Construct and Permit to Operate

Overview:

Air districts issue permits and monitor new and modified sources of air pollution to ensure compliance with national, state, and local emissions standards and to ensure that emissions from such sources will not interfere with the attainment and maintenance of ambient air quality standards adopted by the California Air Resources Board (ARB) and U.S. Environmental Protection Agency (EPA). The various air districts throughout the state are divided into county or regional jurisdictions.

Key Project Features/Issues Triggering Need For Compliance:

- ✓ *The action involves temporary or mobile facilities or equipment that may emit air pollutants*
 - ✓ *The action involves facilities or equipment considered a stationary source (e.g. building, structure, installation) that may emit air pollutants*
 - ✓ *The action involves a proposal to operate equipment that emits pollutants from a stationary or mobile source*
 - ✓ *The action involves construction, operation, or maintenance that may generate fugitive dust emissions*
-

Application to Restoration Plan Actions

Restoration Plan actions in the categories of relocation of diversions and facilities management are likely to require compliance with the air district permit process.

Permits and Consultation

Authority to Construct

Certain Restoration Plan project-specific actions may involve the construction, modification, or operation of a facility or equipment that may emit pollutants from a stationary source into the atmosphere. Before beginning any of these activities, the project applicant must first obtain an Authority to Construct from the county or regional air district (i.e. the Air Pollution Control District [APCD] or Air Quality Management District [AQMD]). EPA Part 70 regulations define a stationary source of air pollution as any building, structure, facility, or installation that emits (or may emit) any regulated air pollutant or any of 189 hazardous air pollutants listed under Section 112(b) of the Clean Air Act Amendments of 1990.

How to Apply for a Permit

Applicants should include the following information on the permit application:

- ❖ Describe the business and industrial process including the types of all material used, the products manufactured, and the wastes generated. This description should also include the type of air pollution control equipment by design, size, or its anticipated degree of control and the types of fuels to be used, their rates of use, and their sulfur and nitrogen content.
- ❖ Give a detailed description of the equipment to be used, including the size, and type, for the entire unit or major part of each unit. This description should include all auxiliary equipment and the location, size, and shape of all features that may influence the production, collection, or control of air contaminants. If the equipment uses burners, the description should specify the type, size, and maximum capacity of each burner.
- ❖ Supply identification numbers of existing air district permits, if any.
- ❖ Provide the operating schedule for emission sources by hours per day, days per week, and weeks per year, including preventive maintenance schedules.

Obtain the appropriate emission factors for the action and estimate daily and annual emissions. Emissions from temporary actions, such as construction activities, should also be estimated even though these actions are often short in duration. Emission factors can be obtained from several sources that include the local air district and federal and/or county documents. The permitting engineer can assist in determining which emission factors would be appropriate for the action.

ARB and EPA have established standards based on public health considerations, known as ambient air quality standards, that govern the quality of the surrounding atmosphere. Emissions limits for specific types of equipment have been established to ensure that ambient standards are attained and maintained. In addition to emissions limits and ambient air quality standards, air districts have adopted what are commonly known as New Source Review Rules. Some districts regulate toxic air contaminants for which there are not ambient air quality standards to prevent endangerment to public health. Applicants may be required to provide information, risk assessments, and control methods for these pollutants in such districts.

Where to Apply for a Permit

Applicants should direct inquiries and notifications (applications) to the appropriate county or regional air district.

Permit Application Fee

Each air district sets its own filing fees for the Authority to Construct application. Applicants should expect to pay from \$100 to \$20,000 in major metropolitan areas. Air districts also charge a permit fee, generally greater than the filing fee, based on the size of the project.

Permit to Operate

Anyone proposing to operate equipment that emits pollutants into the atmosphere from a stationary source must obtain a Permit to Operate from APCD or AQMD for the area in which the equipment is located. The developer/ applicant may apply for the permit only after obtaining an Authority to Construct from the air district and completing the construction or modification according to the terms of the Authority to Construct. EPA Part 70 regulations define a stationary source of air pollution as any building, structure, facility, or installation that emits (or may emit) any regulated air pollutant or any of 189 hazardous air pollutants listed under section 112(b) of the Clean Air Act Amendments of 1990.

How to Apply for a Permit

Typically, projects that require a Permit to Operate will have attained CEQA compliance; however, issuance itself of a Permit to Operate does not require CEQA compliance.

Each air district uses its own application form for the Permit to Operate. In general, the air district asks the applicant to certify that the developer/applicant completed the construction according to the terms and conditions of the Authority to Construct and that the facility will meet the district's regulations.

Where to Apply for a Permit

Applicants should direct inquiries and notifications (applications) to the APCD that issued the Authority to Construct permit.

The air district evaluates applicants for a Permit to Operate to determine whether the developer/ applicant constructed the facility according to the conditions of the Authority to Construct. The air district also determines whether the developer/applicant will comply with the district's rules and regulations when operating the facility. A compliance source test may be required. If required, the test must be conducted by the district or by an approved independent source-testing consultant.

Permit Application Fee

Each air district uses its own Permit to Operate fee schedule. The air district will generally charge the applicant a permit fee equal to that paid for the Authority to Construct, not including the initial filing fee. If the air district must collect samples to analyze the emissions from any source, it will charge the applicant a fee to cover its expenses. Fees range from \$100 to \$10,000 in major metropolitan areas.

Recommendations to Facilitate Environmental Review

- ❖ Contact the air district for which the Restoration Plan action is proposed and discuss potential air emissions with the permitting engineer assigned to action area.
- ❖ Request from the local air district the criteria for air quality thresholds of significance (if available) for air quality impacts.

- ❖ Request the latest version of the air quality regulations that pertain to the action from the air district. The permitting engineer assigned to the regional area of the proposed action can identify which regulations would be applicable.

Authorities

- ♦ 42 USC 7401-7642
- ♦ 40 CFR Part 50 et seq.

Local Regulatory Compliance

Overview:

Cities and counties in California have adopted local zoning ordinances and general plans that set policy on how land development will occur within their respective jurisdictions. Approvals and entitlements at the city or county level are required for many development activities. Although requirements will be similar in most cases, each jurisdiction is likely to have some unique requirements. An overview for each type of approval or entitlement is provided below. CEQA compliance may be required for grading and building permits if they are discretionary and is normally required for approvals or entitlements.

Key Project Features/Issues Triggering Need For Compliance:

- ✓ *The action would involve grading, building or modifying structures, special or conditional uses, modification or approval of general or specific plans (local or regional), and/or zoning ordinance amendment*
-

Application to Restoration Plan Actions

Restoration Plan actions in the categories of fish screens, passage, relocation of diversions, channel and instream habitat modification, riparian habitat, and meander belts are likely to require city or county approvals or entitlements.

Grading Permits

Grading permits are required for earthmoving activities. City or county public works departments require permits for cut-and-fill activities that exceed minimum thresholds set by local grading ordinances. Grading permits can be obtained from the public works department of the city or county in which the project site is located. Generally, the project proponent should provide grading plans that describe existing conditions and the proposed work. Cities or counties will most likely require a project proponent to submit information about the property's location, utility easements, topography, soils, existing structures, waterways, and other details. Some jurisdictions also may require the project proponent to submit environmental information on a questionnaire or checklist.

Grading plans are reviewed for consistency with improvement standards and compliance with local grading ordinances. Fees for plan checking and grading permits vary from jurisdiction to jurisdiction. Depending on the magnitude of the project and the adopted procedures of the jurisdiction where the project would occur, environmental review may be required before a permit is issued.

Review of grading plans may also lead to other permit requirements. For example, some jurisdictions have tree ordinances that require permits for removal of trees. If grading would result in removal of trees of a protected size or species (e.g. native oaks), a tree permit may be required. Demolition permits may be

required if existing structures would be removed during grading. Requirements for demolition permits vary.

Building Permits

Building permits are typically required when a project applicant proposes to erect a structure or significantly modify or renovate an existing structure. Application should be submitted to the public works or building department in the city or county where the structure will be located. The project applicant will be required to provide multiple copies of building plans showing all aspects of the proposed construction.

Building permits are evaluated based on compliance with the Uniform Building Code. Building permits are also reviewed by the planning or community development department for consistency with zoning requirements and any special conditions and provisions attached to the property in question. Once a permit is issued, the structure is inspected during phases of construction by a city or county inspector who certifies the structure for occupancy once construction has been completed and all requirements have been met. Building departments charge a fee for plan checking, permit issuance, and building inspection that is often based on a sliding scale linked to the value of the proposed structure. Review of building plans may also lead to other permit requirements (see previous discussion under "Grading Permits").

Special or Conditional Use Permits

Special or conditional use permits often are required when a project applicant proposes use of property for which it is not designated. Local zoning ordinances typically identify land uses that are permitted in specific land use zones and those that require a use permit. City or county planning or community development departments or agencies typically process applications for special and conditional use permits.

Applications for use permits, which are available from city or county planning or community development departments, should describe the permitting process and requirements. Typical information that would be required would be a description of the project, a description of the project site and the surrounding area, and an assessor's parcel number for the land.

Application fees are variable and may be fixed or based on the complexity of the project. Some cities and counties may also require environmental information for certain types of projects. Additional fees may be required for other environmental documentation requirements.

The use permit application will be compared with adopted development standards and policies that apply to the proposed use or the project site. Consistency with the general plan is one requirement. The city or county typically places specific conditions on the permit related to project design or operation.

Use permits are administrative actions that are considered and approved by an administrative zoning body, such as a planning commission, or a designated officer, such as a zoning administrator. The use permit application is considered at a public hearing and may be denied or approved. The decision of a public hearing body may be appealed.

Subdivision Map Approval

The State Subdivision Map Act provides the legal basis for local governments to regulate land divisions in California for the purposes of sale, lease, or financing. Local plans and ordinances provide criteria for lot sizes, subdivision design, and the types of improvements that are required. Applications for subdivision maps can be submitted to the city or county planning or community development department for processing.

The city or county planning or community development department can provide detailed instructions for processing a subdivision map application. Typical information required would be detailed project information, a description of the site location, a description of applicable general plan and zoning designations, and property owner information. An applicant may also be required to submit environmental information.

Application fees vary among jurisdictions. A flat fee may be charged for processing subdivision map applications or the fee may vary, depending on the complexity of the project. Additional fees may be charged for environmental review and documentation.

Cities or counties evaluate proposed subdivision maps to determine whether the map is consistent with the general plan and zoning ordinances. The projects are reviewed to ensure compliance with community standards for streets, parks, drainages, and other services provided by the city or county. The city or county reviews a tentative map for consistency with local ordinances and may negotiate improvements with the project applicant. The project proponent must submit a final map showing approved lots, improvements, and certificates. If the map complies with the approved tentative map, the city or county can approve it and the project applicant can record the final map as a prerequisite for selling the parcels. The procedures for processing tentative maps vary among jurisdictions. Decisions to deny or approve a subdivision map may be appealed.

Specific Plan

A specific plan may be used by a landowner or a group of landowners to plan for development of an area. A specific plan includes a land use scheme, development standards, and details on supporting infrastructure and public facilities financing. A specific plan can be prepared by landowners or the city or county. Applications for specific plans can be submitted to the city or county planning or community development department for processing.

The information required from the project proponent depends on whether the city or county or the project proponent is processing the specific plan. If a developer submits the plan, the plan must contain:

- ❖ Text and diagrams that show the distribution, location, and extent of proposed land uses;
- ❖ All public and private facilities needed to support the proposed land uses;
- ❖ A program of implementation measures and financing necessary to carry out the project; and
- ❖ A statement of the specific plan's relationship to the general plan.

Application fees vary among jurisdictions. Required fees are proportional to the actual costs of preparing, adopting, or amending the specific plan. Additional fees may be charged for environmental review and documentation.

Specific plans are evaluated for consistency with the general plan. A specific plan would be subject to public hearings before the city or county planning commission and the city council or board of supervisors. A specific plan can be adopted either by ordinance or by resolution. Decisions of the governing bodies to deny or approve the plan can be appealed.

Zoning Ordinance Amendment

A zoning ordinance amendment is typically required if the proposed use of the land is not permitted conditionally or by right in the land use zone in which the property is located. Applications for a zoning ordinance amendment can be submitted to the city or county planning or community development department for processing.

The information required by different cities or counties usually includes current and proposed land uses, a description of the project site and vicinity, the assessor's parcel number for the property, and environmental information. Application fees vary among jurisdictions, depending on the complexity of the project. A flat fee may be charged for processing zoning ordinance amendments. Additional fees may be charged for environmental review and documentation.

Proposed zoning amendments are reviewed for consistency with the general plan and for adverse impacts on neighboring land uses and the environment. The proposal is generally heard by a planning commission, which submits a recommendation to the city council or board of supervisors. During the governing body's public hearings, the proposal can be approved, denied, or modified. If the governing body modifies the proposal, the project is reconsidered by the planning commission.

Local General Plan Amendment

General plans for cities and counties set forth policies to guide local land development. General plans typically include a map of allowable uses and major public works and transportation facilities. A project proponent would need a general plan amendment if a proposed project would be inconsistent with the plan, and an amendment must be approved before development can proceed. Applications for a general plan amendment can be submitted to the city or county planning or community development department for processing. The types of information required by cities or counties is somewhat variable (see discussion under "Zoning Ordinance Amendment").

When an application for a general plan amendment is submitted, the city or county schedules a public hearing before the planning commission. The planning department reports to the commission on project issues such as compliance with general plan policies and potential community impacts. Appropriate environmental documentation is prepared. After the planning commission considers the project, a recommendation is made to the city council or board of supervisors. The governing body conducts a public hearing and approves, denies, or modifies the proposed amendment. If the amendment is modified, it must be referred back to the planning commission for reconsideration.

Recommendations for Facilitating Permitting

- ❖ Coordinate with local municipalities (e.g. cities, counties, regional authorities) to ensure that Restoration Plan actions are consistent with the goals and policies of existing general and specific plans, zoning ordinances, and building codes and that any local permits or waivers are obtained as required.

Authorities

- ♦ Government Code Section 66410 et seq.

5 Citations

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